

FILED RECEIVED
ENTERED SERVED ON
COUNSEL/PARTIES OF RECORD

2003 JUL 30 P 12:38

CLERK U.S. DISTRICT COURT
DISTRICT OF NEVADA

BY MJS DEPUTY

Melvin K. Silverman (MS 5178)
Melvin K. Silverman & Assoc.
One Gateway Center
Suite 2600
Newark, NJ 07102
Telephone: (973) 645-9494
Facsimile: (954) 492-0087
Admitted *pro hac vice*

Andras Fanfeiro Babero
Nevada Bar No. 001658
Andras F. Babero Attorney at Law
9500 Hillwood Drive
Suite 130
Las Vegas, Nevada 89134
Telephone: (702) 474-4100
Facsimile: (702) 474-9988

Attorneys for Defendant

UNITED STATES DISTRICT COURT
FOR THE DISTRICT COURT OF NEVADA

CAESARS WORLD, INC. and PARK PLACE
ENTERTAINMENT CORPORATION,

Plaintiffs,

vs.

Case No.: CV-02-1287-RLH (RJJ)

CYRUS MILANIAN and THE NEW LAS
VEGAS DEVELOPMENT COMPANY,
LLC.,

Defendants.

**MEMORANDUM OF LAW IN OPPOSITION TO
MOTION TO ENTER JUDGMENT ON SANCTIONS**

COMES NOW, the Defendants, CYRUS MILANIAN and THE NEW LAS VEGAS
DEVELOPMENT COMPANY, LLC., by and through their undersigned counsel, and hereby files
the following Memorandum of Law in Opposition to the Plaintiff's Motion for Sanctions, pursuant
to Rule 7, Federal Rules of Civil Procedure and Local Rule 7.2:

1 **FACTS**

2 On or about February 19, 2003, this Court issued its Findings of Fact, Conclusions of Law
3 and Judgment on the instant case following a Bench Trial on January 21 through January 23, 2003.
4 The Defendants, CYRUS MILANIAN (Hereinafter "Milanian") and THE NEW LAS VEGAS
5 DEVELOPMENT COMPANY, LLC. (Hereinafter "NLVDC") have taken an appeal of that final
6 order. The Plaintiffs, CAESARS WORLD, INC. (Hereinafter "Caesars") and PARK PLACE
7 ENTERTAINMENT CORPORATION (Hereinafter "Park Place"), have taken a cross-appeal on the
8 issue of attorney's fees and costs.

9 On or about January 27, 2003, and prior to this Court's Findings of Fact, Conclusions of Law
10 and Judgment, Milanian, filed a civil action against Caesars and Park Place, in the State Court of
11 New Jersey for causes of action which he perceived were not a part of the instant action in Nevada.
12 Caesars and Park Place removed this action to the United States District Court for the District of
13 New Jersey. On or about March 24, 2003, Caesars and Park Place filed a Motion for Contempt
14 before this Honorable Court.

15 On or about May 22, 2003, this Court issued an Order on the Plaintiffs' Motion for Contempt
16 ruling the Defendants "DISMISS WITH PREJUDICE or WITHDRAW their action against Plaintiffs
17 in New Jersey on or before June 2, 2003." The Order further stated that the Defendants were to pay
18 the Plaintiffs \$1,000.00 per day in penalties for every day after June 2, 2003 in which they failed to
19 comply with the Order. (A copy of the Order on Plaintiffs' Motion for Contempt is attached hereto
20 as Exhibit "A.")

21 Although this Court executed the Order on Plaintiffs' Motion for Contempt on May 22, 2003,
22 the undersigned counsel for the Defendants did not actually received the Order until the date for
23 compliance set forth therein, June 2, 2003. (See Declaration of Philip A. Duvalsaint which is
24 attached hereto as Exhibit "B.") Moreover, there is no Federal Rule of Civil Procedure or Local Rule
25 for the District of Nevada which either expressly authorizes a Plaintiff to "withdraw" a cause of
26 action, or even contemplates the "withdrawl" of a complaint or cause of action. The closest analog
27 to such an procedural act would be a voluntary dismissal of a complaint without prejudice pursuant

1 to Rule 41, Federal Rules of Civil Procedure. The confusion and uncertainty on the face of the Order
2 on Plaintiffs' Motion for Contempt caused the Defendants to interpret the meaning and intent of this
3 Court's Order, while still striving to preserve what they considered to be viable causes of action. (See
4 Declaration of Philip Duvalsaint which is attached hereto as Exhibit "B.")

5 The late receipt of the Order, coupled with the seemingly contradictory language of the Order
6 caused the Defendants to file a Notice of Voluntary Dismissal Without Prejudice subsequent to the
7 date of compliance set forth within the Order on Plaintiffs' Motion for Contempt. (A copy of the
8 Notice of Voluntary Dismissal is attached hereto as Exhibit "C.") Subsequent to the filing of the
9 Notice of Voluntary Dismissal Without Prejudice there was still disagreement between the respective
10 counsel for the parties as to the correct interpretation of the Order. (A copy of the e-mails between
11 counsel is attached hereto as Composite Exhibit "D.") The disagreement resulted in the Defendants'
12 Withdrawal of the Notice of Dismissal Without Prejudice and the Filing of a Notice of Withdrawal,
13 in an effort to comply with the letter of this Court's Order. (A copy of the Withdrawal of the Notice
14 of Voluntary Dismissal Without Prejudice and Notice of Withdrawal are attached hereto as Exhibits
15 "E" and "F," respectively.)

16 Still subsequent to the Notice of Withdrawal there was still disagreement as to whether the
17 Defendants' had complied with the requirements of the Order on Plaintiffs' Motion for Contempt.
18 The Defendants took, and have always taken, the position that they have made every effort to comply
19 with this Court's Order. The Plaintiffs have taken the position that nothing less than a Dismissal
20 with Prejudice was unsatisfactory. The controversy again left the parties struggling to determine the
21 meaning of the provision to withdraw the cause of action that was set forth within the Order. The
22 Plaintiffs have even conceded there is confusion as to the meaning of the Order in their letter to this
23 Court dated June 9, 2003, and their letter to the New Jersey Court on June 11, 2003. Both letters
24 reference a clarification of the original Order by this Court in order to prevent confusion. (A copy
25 of the Letter dated June 9, 2003 and the Letter dated June 11, 2003, are attached hereto as Exhibit "G"
26 and "H," respectively.)

27 The parties appeared by telephone before the New Jersey Court in an effort to clarify the
28

1 issue. The New Jersey Court stated that it had never heard of a withdrawal of a complaint or a cause
2 of action as was referenced by the Order on Plaintiffs' Motion for Contempt. Accordingly, it ruled
3 that Notice of Dismissal with Prejudice be filed. However, in order to account for the position of
4 the Defendants, it ruled that should the Appeal in the Ninth Circuit Court of Appeals be determined
5 in favor of the Defendants, they would be able to refile their cause of action in New Jersey. The
6 parties have ultimately entered into a Stipulation and Order to that effect.

7 The Plaintiffs have now filed the Motion to Enter Judgment on Sanctions based upon non-
8 compliance with this Court's Order on the Plaintiffs' Motion for Contempt. The Plaintiffs have
9 requested this Court enter an Order awarding them \$14,000.00 in sanctions representing a delay of
10 14 days when the New Jersey Court ordered the Defendants to file a Notice of Dismissal with
11 Prejudice as set forth above. The Defendants take the positions that the late receipt of the Order
12 coupled with the confusion of all parties as to the meaning of the wording therein rendered them
13 unable to comply with the Court's Order until the New Jersey Court provided clear guidance as to
14 the correct interpretation thereof. Even the New Jersey Court had difficulty with the wording of the
15 Order allowing a withdrawal of the complaint of cause of action. In consideration thereof, the
16 Defendants argue that in good faith they attempted to substantially comply with this Court's Order.
17 As such, the Plaintiffs, who conceded the confusion in a letter to this Court, should not be entitled
18 to any award of sanctions.

19 The Defendants offer this Memorandum of Law in Support of their position.

20 ARGUMENT

21 A moving party has the burden of proving, by clear and convincing evidence that the parties
22 which it seeks to hold in contempt violated a court order. *See, RLI Insurance Company v.*
23 *Commercial Money Center, Inc.*, 2002 WL 32081853 (S.D. Cal.). If the moving party is successful
24 in meeting their initial burden of proof, then the burden shifts to the contemnors to demonstrate why
25 they were unable to comply. *Id.* at 1.

26 In the Ninth Circuit the legal standard is the contemnors have performed "all reasonable steps
27 within their power to ensure compliance." *Id.* If a fine is to be paid by the contemnors it is to be

1 based upon the actual loss, if any, of the complainants. *Id.* at 2. Alternatively, if the intent of the
2 Court is to make the defendant comply, the penalty should consider that parties' financial resources
3 and the potential burden to that defendant. *Id.*

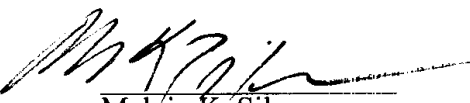
4 When there is ambiguity or confusion in the order itself, the party that is potentially at fault
5 should not be held in contempt. *See, Vertex Distributing, Inc. v. Falcon Foam Plastics, Inc.*, 689
6 F.2d 885 (9th Cir. 1982). The terms of a court order should be clear and specific and leave not doubt
7 or uncertainty in the minds of those to whom it is addressed. *Id.* at 889. If the party's actions
8 appears to be based upon a good faith and reasonable interpretation of the court's order, then they
9 should not be held in contempt. *Id.*

10 In the case at bar, the Defendants took all reasonable steps to comply with the Court's Order.
11 The Order gave the Defendants the option of filing a Dismissal of Prejudice of the New Jersey action
12 or to Withdraw their action. The Order did not define what it meant by a Withdrawal, nor is their
13 any guidance in the Federal Rules of Civil Procedure or Local Rules. Under the circumstances it was
14 reasonable for the Defendants to interpret the Order to mean a Dismissal with Prejudice as being a
15 final act, or a Voluntary Dismissal without Prejudice until the Appeal with the Ninth Circuit is
16 decided. It made no sense to set give the Defendants two alternatives that meant the same thing.
17 When that filing met the disapproval of the Plaintiffs, the Defendants filed a Notice of Withdrawal,
18 in exact compliance with the letter of the Order. However, it still took the wisdom of the New Jersey
19 Court to determine the nature of the document that needed to be filed. These circumstances do not
20 warrant the imposition of a penalty, and certainly not a penalty in the amount of \$14,000.00.

21 CONCLUSION

22 For the reasons set forth above, the Defendants respectfully request this Court to deny the
23 Plaintiffs' Motion for a Judgment of Sanctions.

24 Respectfully Submitted,

25
26 
27 Melvin K. Silverman

1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that a true and correct copy of the foregoing has been delivered by
3 facsimile and First Class U.S. Mail this 29th day of July, 2003 to:

4 Stephen W. Feingold
5 Richard H. Brown
6 PITNEY, HARDIN, KIPP & SZUCH LLP
7 685 Third Avenue
8 New York, New York 10017-4024
9 Facsimile: (973) 966-1550
10 Facsimile: (212) 682-3485

Gary R. Goodheart, Esq.
Patrick A. Rose, Esq.
JONES VARGAS
3773 Howard Hughes Parkway
Third Floor South
Las Vegas, Nevada 89109
Facsimile (702) 737-7705

11 
12 Melvin K. Silverman

Table of Authorities

Federal Cases

<i>RLI Insurance Company v. Commercial Money Center, Inc.</i> , 2002 WL 32081853	4, 5
<i>Vertex Distributing, Inc. v. Falcon Foam Plastics, Inc.</i> , 689 F.2d 885 (9th Cir. 1982)	5

Federal Statutes:

Fed. R. Civ. Pro. 7	1
Nevada District Court Local Rule 7-2	1
Fed. R. Civ. Pro. 41	3

Exhibit List

Exhibit "A"	Order on Plaintiffs' Motion for Contempt
Exhibit "B"	Declaration of Philip A. Duvalsaint
Exhibit "C"	Notice of Voluntary Dismissal
Composite Exhibit "D"	e-mails between counsel
Exhibit "E"	Withdrawal of the Notice of Voluntary Dismissal Without Prejudice
Exhibit "F"	Notice of Withdrawal

MELVIN K. SILVERMAN (MS5178)
MELVIN K. SILVERMAN & ASSOC.
mks@powerlaw.net
One Gateway Center,
Suite 2600
Newark, NJ 07102
Phone: (973) 645-9494
Attorneys for Plaintiff Cyrus Milanian

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

CYRUS MILANIAN

Plaintiff

v.

CAESARS WORLD, INC., and PARK
PLACE ENTERTAINMENT CORP.

Defendants.

Honorable Freda L. Wolfson


Civil Action No. 03-1259

WITHDRAWAL

COMES NOW, Plaintiff CYRUS MILANIAN (hereinafter "Plaintiff"), by and through their undersigned attorney hereby Withdraws Its Complaint in connection with the above styled action against all Defendants.

Respectfully Submitted,

Kenneth S. Goodkind, Esq.
FLASTER GREENBERG P.C.
1810 Chapel Avenue West
Suite 300
Cherry Hill, NJ 08002-4606
Cherry Hill, NJ
(856) 661-2273
ken.goodkind@flastergreenberg.com

(s) 

Melvin K. Silverman, Esquire
(For the firm)
MELVIN K. SILVERMAN & ASSOC.
One Gateway Center,
Suite 2600
Newark, NJ 07102
Phone: (973) 645-9494
mks@powerlaw.net

EXHIBIT "F"

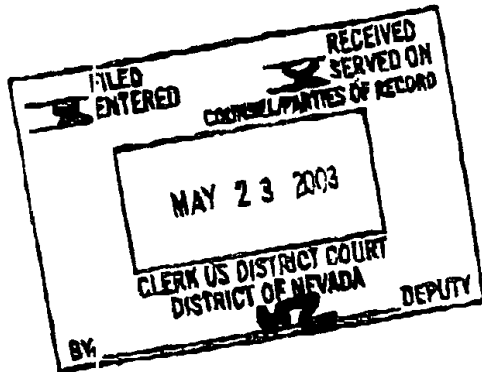
FROM PITNEY HARDIN KIPP & SZUCH
MAY-30-2003 FRI 12:37 PM PITNEYHARDINKIPPSZUCH

(FRI) 5.30'03 17:16 ST. 17:11/NO. 4850155314 P 4
FAX NO. 212 602 6328 P. 03

05/28/2003 12:04 FAX 7027577708
MAY-23-2003 09:43

JONES VARGAS

0003
P. 02/03



FILED RECEIVED
ENTERED SERVED ON
COUNSEL PARTIES OF RECORD

2003 MAY 22 P 1:1

BY DEPUTY

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

**CAESARS WORLD, INC. and PARK PLACE
ENTERTAINMENT CORPORATION.**

Plaintiffs,

vs.

**CYRUS MILANIAN and THE NEW LAS
VEGAS DEVELOPMENT COMPANY,
LLC.**

Defendants.

Case No.: CV-S-02-1287-RLH (R/J)

ORDER

The Court, having considered Plaintiffs' Motion for Contempt (#78) and hearing argument in a duly noticed hearing on May 21, 2003, at which Defendants did not appear, hereby finds Defendants guilty of civil contempt.

Accordingly, and for good cause appearing.

IT IS HEREBY ORDERED that Defendants DISMISS WITH PREJUDICE or WITHDRAW their action against Plaintiffs in New Jersey on or before June 2, 2003.

IT IS FURTHER ORDERED that, failing to dismiss with prejudice or withdraw their action in New Jersey, Defendants shall pay to Plaintiffs a penalty of \$1000 per day for every day after June 2, 2003 that they fail to comply with the Court's order.

EXHIBIT "A"

94

FROM PITNEY HARDIN KIPP & SZUCH

(FRI) 5.30'03 17:16'00T 17:11/NO. 4860155314 P 5
FAX NO. 212 682 28 P. 04

05/28/2003 12:08 FAX 7027377705

JONES VARGAS

2004
P. 03/03

MAY-23-2003 09:44

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IT IS FURTHER ORDERED that the clerk shall send to both parties, by mail and
by facsimile, this order today, May 22, 2003.

Dated: May 22, 2003.


ROBERT D. HUNT
United States District Judge

1 Melvin K. Silverman (MS)
Melvin K. Silverman & Assoc.
2 500 W. Cypress Creek Rd., Suite 500
Fort Lauderdale, FL 33309
3 Telephone: (954) 351-7474
Facsimile: (954) 492-0087
4 Admitted *pro hac vice*

5 Andras Fanfeiro Babero
Nevada Bar No. 001658
6 Andras F. Babero Attorney at Law
9500 Hillwood Drive
7 Suite 130
Las Vegas, Nevada 89134
8 Telephone: (702) 474-4100
Facsimile: (702) 474-9988

9 Attorneys for Defendant

10
11
12 **UNITED STATES DISTRICT COURT**

13 **DISTRICT OF NEVADA**

14 CAESARS WORLD, INC. and PARK
15 PLACE ENTERTAINMENT
CORPORATION,
16 Plaintiffs,

v.

17 CYRUS MILANIAN, and THE NEW LAS
18 VEGAS DEVELOPMENT COMPANY,
L.L.C.,

Civil Action No.: CV-S-02-1287-RLH (RJJ)

19 **DECLARATION OF PHILIP A. DUVALSAINT**

20 PHILIP A. DUVALSAINT under penalty of perjury, declares:

- 21 1. I am a resident of the state of Florida.
22 2. I am over the age of 18, and am fully competent to make the herein Declaration.
23 3. I am an attorney licensed to practice in the State of Florida.
24 4. I hereby make this Declaration based upon my personal knowledge.
25 5. I have worked with Melvin Silverman in the case styled Cyrus Milanian, v.

26 Caesars World, Inc. and Park Place Entertainment Corp., case Nos. CACE ATL-L-230-03, and
27 03-CV-1259.
28

EXHIBIT : **B**

6. On or about January 27, 2003, Plaintiff Cyrus Milanian filed a seven (7) count complaint against Defendants Caesars World, Inc. and Park Place Entertainment Corp., for Theft of Trade Secrets, Idea Misappropriation, Breach of Express Contract, Breach of Implied Contract, Breach of Confidential Relationship, Misrepresentation, and Detrimental Reliance, in the Superior Court of New Jersey Law, Division, Atlantic County, New Jersey which was assigned Case Number CACE ATL-L-230-03 (collectively hereinafter referred to as the "New Jersey Action"). (A copy of which is attached hereto as Exhibit "A")

7. On February 19, 2003, this Court entered its Final Judgment ruling that the claims asserted in the New Jersey Action were compulsory counterclaims. (A copy of the Final Judgment is attached hereto as Exhibit "B")

8. On March 18, 2003, Defendants Caesars World, Inc. and Park Place Entertainment Corp., filed an Notice of Filing Notice of and Petition for Removal under 28 U.S.C. § 1446(a). (A copy of the Notice is attached hereto as Exhibit "C")

9. On April 17, 2003, Melvin K. Silverman filed Notice of Appearance, and an Objection to Removal/Motion for Remand in the case. (A copy of the Notice of Appearance, and Objection to Removal/Motion for Remand are attached hereto as Exhibits "D" and "E")

10. On March 24, 2003, Caesars World, Inc. and Park Place Entertainment Corp., filed a Motion for Contempt against Cyrus Milanian. (A copy of the Motion is attached hereto as Exhibit "F")

11. On May 2, 2003, I participated in a telephone conference with Judge Freda Wolfson, the U.S. District Court Judge in the New Jersey Action, and counsel for the Defendants, Caesars World, Inc. and Park Place Entertainment Corp.

12. As a result of that telephone conference, Judge Freda Wolfson stayed the proceedings in the New Jersey Action, pending a ruling on the Contempt Motion from the District Court in Nevada. (A copy of the Order is attached hereto as Exhibit "G")

13. On May 23, 2003, this Court issued a contempt order, requiring Cyrus Milanian to either Withdraw his Complaint or Dismiss the Complaint with Prejudice no later than June 2, 2003. (A copy of the Order is attached hereto as Exhibit "H")

1 14. The Contempt Order was sent to Melvin K. Silverman, at his New Jersey office,
2 and forwarded to his office in Florida, where he was at the time.

3 15. The Contempt Order was received at the Florida office of Melvin K. Silverman,
4 on June 2, 2003.

5 16. The wording of the order caused some confusion, in that the choices of filing
6 either a Withdrawal or Dismissal with Prejudice were stated in the alternative.

7 17. Counsel for Cyrus Milanian therefore interpreted Withdrawal to mean a Dismissal
8 Without Prejudice, until the Appeal with the Ninth Circuit is decided, and overnighted the
9 Dismissal without Prejudice on June 5, 2003 to the clerk of the New Jersey District Court, which
10 was filed on June 6, 2003. (A copy of the Dismissal without Prejudice is attached hereto as
11 Exhibit "I")

12 18. On June 6, 2003 through and including June 18, 2003 Melvin K. Silverman was
13 out of the country.

14 19. On or about June 8, 2003, I had a telephone conversation with counsel for
15 Defendants, Caesars World, Inc. and Park Place Entertainment Corp., in which I was told that
16 they did not consider the Dismissal without Prejudice to satisfy this Courts Contempt Order.

17 20. I immediately contacted our local counsel in New Jersey, and asked them to sign
18 and file a motion withdrawing the dismissal without prejudice, and substitute a Withdrawal in its
19 place, and overnighted the Withdrawal, and Motion to Withdraw Voluntary Dismissal without
20 Prejudice to our local counsel. (A copy of the Withdrawal, and Motion to Withdraw Voluntary
21 Dismissal without Prejudice are attached hereto as Exhibits "J" and "K")

22 21. On June 9, 2003, the motion withdrawing the dismissal without prejudice, and the
23 withdrawal were filed.

24 22. On June 16, 2003, I participated in a telephone conference with Judge Freda
25 Wolfson, the U.S. District Court Judge in the New Jersey Action, and counsel for the
26 Defendants, Caesars World, Inc. and Park Place Entertainment Corp. To discuss the Nevada
27 Court's Order.

28 23. At the telephone conference, Judge Freda Wolfson ordered the parties to submit
an Order of Stipulation of Dismissal, which the parties have been finalized, and submitted to

1 Judge Freda Wolfson.

2 24. I declare the above to be true upon penalty of perjury.

3 

July 29th, 2003

4 Philip A. Duvalsaint

FLASTER/GREENBERG P.C.
Commerce Center
1810 Chapel Avenue West, 3rd Floor
Cherry Hill, New Jersey 08002-4409
Phone: (856) 661-1908
Attorneys for Plaintiff

CYRUS MILANIAN

Plaintiff

vs.

CAESARS WORLD, INC. and PARK
PLACE ENTERTAINMENT CORP.

Defendants

RECEIVED 284
FILED

MAY 27 2003

ATLANTIC COUNTY
LAW DIVISION

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
ATLANTIC COUNTY
DOCKET NO.:

Civil Action

COMPLAINT

CYRUS MILANIAN, by and through his undersigned attorneys by way of Complaint in this action hereby says:

1. Plaintiff, Cyrus Milanian ("Milanian" or "Plaintiff"), is an individual who resides in Jersey City, Hudson County, New Jersey.
2. Caesars World, Inc. ("CW") is a corporation organized and existing under the laws of the State of Florida, and has an office and principal place of business in Atlantic City, New Jersey.
3. Park Place Entertainment Corp. ("PP") is a corporation organized and existing under the laws of the State of Delaware, having an office and principal place of business in Atlantic City, New Jersey.
4. CW is a wholly owned subsidiary of PP.
5. On or about May 12, 1996, Milanian submitted an eight-page outline of a confidential business plan entitled the "Milanian Project" to CW in Las Vegas, Nevada.

EXHIBIT "A"

CERTIFICATION PURSUANT TO RULE 4:5-1

Pursuant to the provisions of Rule 4:5-1, I hereby certify as follows:

1. Except as stated below, the matter in controversy is not the subject of any other pending action in any other court or of a pending arbitration proceeding in this jurisdiction.

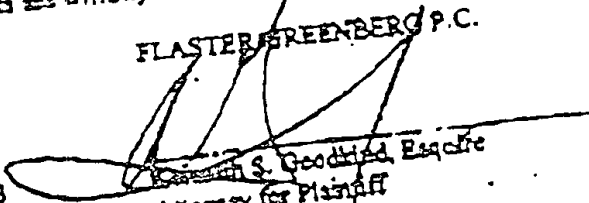
2. A related action has been pending in the U.S. District Court in the District of Nevada between these parties captioned as *Cascares World, Inc. and Park Place Entertainment Corporation v. Cyrus Mikrales and The New Las Vegas Development Corp., LLC*, CV-S-02-1237-RLH-BLL.

3. It is contemplated that the matter in controversy will not become the subject of any other action in any court or of a pending arbitration proceeding.

4. Plaintiff is not aware of any other party that needs to be joined in this proceeding. I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.

FLASTER GREENBERG P.C.

Dated: January 24, 2003

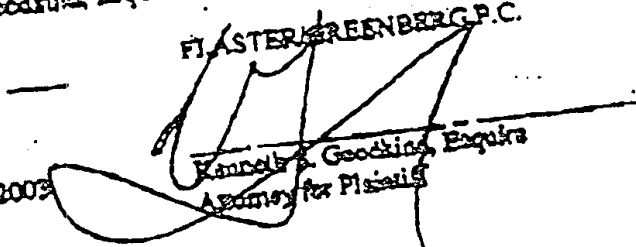

Kenneth S. Goodkind, Esquire
Attorney for Plaintiff

DESIGNATION OF TRIAL COUNSEL

Kenneth S. Goodkind, Esquire is hereby designated as trial counsel for Plaintiff.

FLASTER GREENBERG P.C.

Dated: January 24, 2003


Kenneth S. Goodkind, Esquire
Attorney for Plaintiff

6. The Marlania Project included a sub-project for the construction of a replica of the ancient Coliseum of Rome and the integration thereof into the Caesar's Palace property of CW in Las Vegas, Nevada.

7. The replica Coliseum was to include an entertainment complex including restaurants, theatres, shops and special events.

8. The above Plaintiff's business plan was novel.

9. By letter dated August 12, 1996, CW declined to further consider the Marlania Project and acknowledged the confidentiality of Plaintiff's submission.

10. By a certificate dated August 14, 1996, David Mitchell, a vice president of CW, confirmed receipt of the Marlania Project submission, advised Plaintiff that CW had no interest therein "at this time" and further confirmed that the submission was confidential.

11. David Mitchell's certificate of August 14, 1996 was reviewed by the general counsel of CW.

12. In April 2001, CW and PP announced the construction of a replica of the Coliseum of Rome as an extension of their property in Las Vegas, and the use thereof as an entertainment and convention venue, which is presently scheduled to open in March 2003.

13. The construction of the replica detailed in the preceding paragraph was identical to the idea previously presented by Plaintiff.

14. Despite the fact that Plaintiff had presented the idea of constructing a replica of the Coliseum of Rome as an extension of the CW and PP property in Las Vegas, Defendants failed to provide Plaintiff with any credit, recognition, compensation or remuneration in any form.

COUNTY
THEFT OF TRADE SECRETS

15. The preceding paragraphs are incorporated herein by reference as if set forth at length.
16. Plaintiff's confidential submissions, containing his ideas, concepts, market research, business plans, contacts and other information related to the Martz Project to Defendants, offered numerous advantages over other entertainment venues.
17. At the time of Plaintiff's presentation and confidential disclosure to the Defendants, there was no such tourist attraction in the Las Vegas area or anywhere in the United States directed to Rome's Coliseum.
18. Prior to the disclosure of the Plaintiff's new concepts and plans in connection with the Martz Project to Defendants, there did not exist an entertainment complex replicating Rome's Coliseum and including restaurants, theaters, shops and special events.
19. Plaintiff's ideas, plans, market research, contact information, concepts, and presentations, which Plaintiff submitted to Defendants and their agents, constituted valuable trade secrets of Plaintiff, contemplated for use by, and with, his business, and having great commercial value to Defendants.
20. Plaintiff's trade secrets taught Defendants, in business and legal terms, expressions, methods and means of implementation of Plaintiff's ideas, plans, market research, contact information and concepts disclosed to Defendants.
21. Such trade secrets were not theretofore known to Defendants or otherwise known to the public, and could not be independently obtained or derived by Defendants by proper, lawful means.

22. Plaintiff, at all times, undertook reasonable efforts under the circumstances to maintain the secrecy and confidentiality of his trade secrets and of all disclosures made to Defendants and their agents, which disclosures were all made in confidence.

23. Plaintiff's trade secrets were thereby sufficiently secret, and derived economic value from the fact that they were not known to the public, including Defendants, who could, did, and continue to obtain independent economic value from their disclosure and use.

24. Plaintiff's trade secrets thereby provided to Defendants an advantage, and/or an opportunity to obtain an advantage, that they would not otherwise have had.

25. Defendants, using improper means, knowingly misappropriated Plaintiff's trade secrets with willful and malicious intent to deprive Plaintiff of his intellectual property and of rights held therein by making unauthorized uses and disclosures of Plaintiff's trade secrets.

26. Defendants thereby willfully and maliciously misappropriated Plaintiff's trade secrets, to the detriment of Plaintiff.

27. Plaintiff has been greatly damaged by Defendants' misappropriation of his trade secrets and Defendants have been unjustly enriched.

WHEREFORE, Plaintiff demands judgment in his favor against Defendants for compensatory damages, consequential damages, exemplary damages, attorneys fees and costs, disgorgement of profits and any such other relief as this Court deems just and appropriate.

COUNT II IDEA MISAPPROPRIATION

28. The preceding paragraphs are incorporated herein by reference as if set forth in length.

29. Defendants herein misappropriated Plaintiff's idea for the construction of a replica of the Colosseum of Rome, and made use of Plaintiff's idea for their own benefit.

30. Defendants were aided in the development of their own concepts and products by the misappropriation of Plaintiff's ideas.

30. Plaintiff's idea was novel at the time that it was presented to Defendants.

31. Plaintiff's idea was also disclosed in confidence, as the Defendants themselves have admitted and certified.

32. As a direct and proximate result of Defendant's actions, Plaintiff has sustained substantial damages.

WHEREFORE, Plaintiff demands judgment in his favor against Defendants for compensatory damages, consequential damages, exemplary damages, attorneys fees and costs, disgorgement of profits and any such other relief as this Court deems just and appropriate.

COUNT III BREACH OF EXPRESS CONTRACT

33. The preceding paragraphs are incorporated herein by reference as if set forth at length.

34. Defendants expressly agreed that the Marlania Project, as well as the information submitted by Plaintiff, was confidential and would be kept confidential.

35. By agreeing, in writing, to maintain the confidentiality of Plaintiff's Marlania Project, an express contract arose between the parties.

36. Defendants agreed that they would not utilize Plaintiff's information unless authorized to do so. _____

37. Defendants used Plaintiff's Marlania Project, including trade secrets and proprietary rights, in conscious disregard of their duty to obtain Plaintiff's permission to do so.

38. Defendants are in breach of the contract.

39. Plaintiff has not received legal or equitable consideration under this contract commensurate to the value of the consideration Defendants received from Plaintiff.

40. Plaintiff has suffered, and continues to suffer, harm as a direct and proximate result of such breach including, but not limited to, economic harm.

41. These acts and omissions of Defendants constituted a material breach of its contract with Plaintiff thereby causing him to suffer irreparable harm.

WHEREFORE, Plaintiff demands judgment in his favor against Defendants for compensatory damages, consequential damages, exemplary damages, attorneys fees and costs, disgorgement of profits and any such other relief as this Court deems just and appropriate.

COUNT IV BREACH OF IMPLIED CONTRACT

42. The preceding paragraphs are incorporated herein by reference as if set forth in length.

43. Defendants freely, knowingly and willingly obtained Plaintiff's confidential proprietary information and materials described herein pursuant to an understanding that, and under conditions that, they were not to be used without Plaintiff's prior written permission or approval and adequate compensation.

44. As such, an implied contract arose by operation of law between Plaintiff and Defendants.

45. The terms of this contract were that Defendants would compensate Plaintiff if they or their agents disclosed or used or otherwise benefited from any of the ideas, concepts, market research, business plans, concepts and other materials and items of Plaintiff.

46. Defendants did, in fact, knowingly and intentionally use, disclose and otherwise derive benefit from Plaintiff's ideas, concepts, market research, business plans, contacts and other materials and items in conscious disregard of Plaintiff's rights under said implied contract.

47. Plaintiff has not received any equitable or legal consideration under said implied contract.

48. Defendants have thereby been unjustly enriched as a result of their wrongfully acquired gains from Plaintiff to the detriment of Plaintiff.

49. Plaintiff is thereby entitled to restitution for the unjust enrichment of Defendants attendant to their development and use, present and future, of all appropriated ideas, concepts, market research, business plans, contacts and other materials of Plaintiff as described above.

WHEREFORE, Plaintiff demands judgment in his favor against Defendants for compensatory damages, consequential damages, exemplary damages, attorneys fees and costs, disgorgement of profits and any such other relief as this Court deems just and appropriate.

COUNT IV BREACH OF CONFIDENTIAL RELATIONSHIP

50. The preceding paragraphs are incorporated herein by reference as if set forth at length.

51. A confidential relationship arose and then existed between Plaintiff and Defendants.

52. Defendants, by their acts described herein, knowingly and intentionally breached the express and implied terms of said confidential relationship with the specific intent to profit therefrom.

53. Plaintiff has neither consented to nor authorized the use or disclosure of any of his ideas, concepts, market research, business plans, contacts and other materials and items by anyone, and has otherwise not abandoned same.

54. Plaintiff did not have reason to suspect that such a breach of confidence would occur, during or after the period in which he disclosed his ideas, concepts, market research, business plans, contacts and other materials to Defendants.

55. Defendants were aware that their breach of said confidential relationship helped them to facilitate use of Plaintiff's confidentially disclosed ideas, concepts, market research, business plans, contacts and other materials.

56. Defendants have been unjustly enriched by their breach of this confidential relationship with Plaintiff, this to the detriment of Plaintiff.

WHEREFORE, Plaintiff demands judgment in his favor against Defendants for compensatory damages, consequential damages, exemplary damages, attorneys fees and costs, disgorgement of profits and any such other relief as this Court deems just and appropriate.

COUNT V MISREPRESENTATION

57. The preceding paragraphs are incorporated herein by reference as if set forth at length.

58. If allowed to use Plaintiff's ideas, designs, methods and concepts at all, Defendants had a duty to inform Plaintiff of their intention to use Plaintiff's ideas, designs,

methods and concepts in the construction of a replica of the Coliseum of Rome as an extension of their property in Las Vegas prior to actually doing so.

59. Defendants did not exercise reasonable care in processing Plaintiff's 1996 submissions and did not communicate to Plaintiff their true intentions regarding the Coliseum project.

60. In order to induce Plaintiff to share his confidential proposal, Defendants represented that all information would remain confidential.

61. Millman relied upon these representations when he disclosed the elements of the Marlene Project to Defendants.

62. These representations were false when made.

63. The Defendants had actual or constructive knowledge of their falsity and/or should have had knowledge that the representations were false.

64. As a proximate result of Defendants' misrepresentations, Plaintiff has suffered substantial damages.

WHEREFORE, Plaintiff demands judgment in his favor against Defendants for compensatory damages, consequential damages, exemplary damages, attorneys fees and costs, disgorgement of profits and any such other relief as this Court deems just and appropriate.

COUNT VI DEFERENTIAL RELIANCE

65. The preceding paragraphs are incorporated herein by reference as if set forth in length.

66. Defendants promised Plaintiff that all information provided would remain confidential.

67. Defendants should have expected that Milanian would rely on the promise.
68. Plaintiff did in fact rely upon this promise, to his substantial detriment.
69. As a direct and proximate result of Defendants' breach, the Plaintiff has suffered substantial damages.

WHEREFORE, Plaintiff demands judgment in his favor against Defendants for compensatory damages, consequential damages, exemplary damages, attorneys fees and costs, disgorgement of profits and any such other relief as this Court deems just and appropriate.

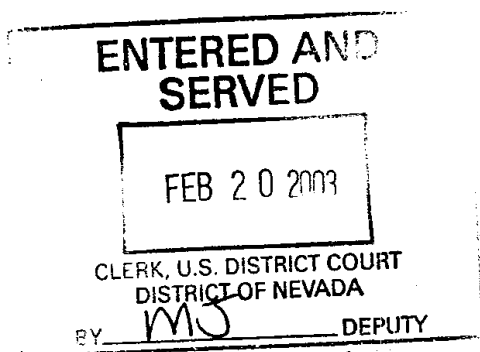
JURY TRIAL DEMAND

Demand is hereby made for a trial by jury.

FLASTER GREENBERG P.C.

Dated: January 24, 2003

Kenneth S. Goodrich, Esquire
Attorney for Plaintiff



RECEIVED
AND FILED

2003 FEB 19 AM 9:55

LANCE S. WILSON
BY MS DEPUTY

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

CAESARS WORLD, INC. and
PARK PLACE ENTERTAINMENT
CORPORATION,

Plaintiffs,

vs.

CYRUS MILANIAN and
THE NEW LAS VEGAS DEVELOPMENT
COMPANY, LLC,

Defendants.

Case No. CV-S-02-1287-RLH (RJJ)

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND JUDGMENT**

This matter having come on for trial before the bench on January 21-23, 2003, and the Court having heard the testimony of witnesses and received evidence, the Court makes the following Findings of Fact, and Conclusions of Law, and enters Judgment thereon as follows:

FINDINGS OF FACT

A. The Parties

1. Plaintiff Caesars World, Inc. ("CWI") is a Florida corporation, with its principal place of business at 3930 Howard Hughes Parkway, Las Vegas, Nevada 89109.

1 2. Plaintiff Park Place Entertainment Corporation ("PPE") is a Delaware corporation,
2 with its principal place of business at 3930 Howard Hughes Parkway, Las Vegas, Nevada 89109.
3 CWI is a wholly owned subsidiary of PPE.

4 3. Defendant Cyrus Milanian is an individual domiciled in New Jersey who transacts
5 business in the State of Nevada.

6 4. Defendant The New Las Vegas Development Company, LLC, is a Nevada limited
7 liability corporation.

8
9 **B. Plaintiffs Claims For Relief**

10 5. Plaintiffs' initial complaint included five causes of action. Count One seeks
11 declaratory judgment that Plaintiffs are not infringing any rights of Defendants by virtue of their
12 use of the mark COLOSSEUM for a new entertainment venue at Caesars Palace in Las Vegas.

13 6. Count Two alleges that Defendants are infringing Plaintiffs' rights in their
14 COLOSSEUM common law trademark in violation of the Lanham Act.

15 7. Count Three alleges that Defendants are infringing Plaintiffs' rights in their
16 COLOSSEUM common law trademark in violation of the Nevada law.

17 8. Count Four alleges that Defendants are violating Plaintiffs' rights in their EMPIRE
18 family of marks, in violation of the Lanham Act.

19 9. Count Five alleges that Defendants are violating Plaintiffs' rights in their EMPIRE
20 family of marks, in violation of Nevada law.

21 10. At the conclusion of Plaintiffs' case the Court granted Plaintiffs' motion to amend
22 the Complaint to conform to the evidence under Rule 15(b) of the Federal Rules of Civil Proce-
23 dure. (Tr. 473-474). Plaintiffs are filing an Amended Complaint, which adds Count Six seeking a
24
25
26

1 declaratory judgment that Plaintiffs have not violated any claims Defendant Milanian may have
2 either for breach of contract, theft of trade secret, misappropriation or conversion, based on
3 Milanian's purported 1996 proposal to CWI with respect to the construction at Caesars Palace of a
4 replica of the ancient Roman Coliseum. While the Amended Complaint still includes the claims
5 against NLVD (Counts 1-5), NLVD has been dismissed from this action.
6

7 **C. The Plaintiffs**

8 11. PPE is the world's largest gaming company owning, managing or having an interest
9 in 27 properties operating under various trademarks including the famous CAESARS, BALLY'S,
10 GRAND CASINO, PARIS, and FLAMINGO brands. (Tr. 49). In 1999, PPE acquired CWI in a
11 transaction that included Caesars Palace, located in Las Vegas, Nevada, CWI's trademarks, and
12 other CWI assets. (Tr. 51). In addition to gaming services, both PPE and CWI provide hotel and
13 restaurant services, convention facilities and services, sporting events, concerts, and other
14 entertainment to the public. (Tr. 66).
15

16 12. Plaintiffs' premiere property is Caesars Palace in Las Vegas, Nevada, which opened
17 on August 6, 1966. (Tr. 49, 51). Caesars Palace has an opulent Roman-Grecian theme, with
18 marble statuary, and stylized designs that reflect the theme, and facilities that bear the names
19 associated with ancient Rome and Greece. (Tr. 51).
20

21 13. CWI is the owner of several marks registered with the United States Patent and
22 Trademark Office ("USPTO"), relating to this Roman-Grecian theme, including, but not limited
23 to: CAESARS (Reg. No. 0954684— incontestable (Ex. 463-K); Reg. No. 0983525— incontestable
24 (Ex. 463-N); Reg. No. 1527770— incontestable (Ex. 463-AL); Reg. No. 1988107— incontestable
25 (Ex. 463-BB)), CAESARS (stylized) (Reg. No. 1001363— incontestable (Ex. 463-O); Reg. No.
26

0954637– incontestable (Ex. 463-AC); Reg. No. 1527771– incontestable (Ex. 463-AM)),
CAESARS PALACE (Reg. No. 0907693– incontestable (Ex. 463-A), Reg. No. 0951262–
incontestable (463-T); Reg. No. 0963820– incontestable (Ex. 463-R); Reg. No. 0963656–
incontestable (Ex. 463-U); Reg. No. 1091551– incontestable (Ex. 463-AR)), CAESARS PALACE
(stylized) (Reg. No. 0907696– incontestable (Ex. 463-D); Reg. No. 0968212– incontestable (Ex.
463-V); Reg. No. 1090494– incontestable (Ex. 463-F); Reg. No. 1004058– incontestable (Ex. 463-
S); Reg. No. 1158035– incontestable (Ex. 463-AG)), I, CAESAR (Reg. No. 0907694– incontest-
able (Ex. 463-B); Reg. No. 0966734– incontestable (Ex. 463-W)), CIRCUS MAXIMUS (Reg. No.
0965251– incontestable (Ex. 463-E)), THE PALACE (Reg. No. 1096310 – incontestable (Ex. 463-
G); Reg. No. 1128428– incontestable (Ex. 463-M)), A CAESARS WORLD RESORT (Reg. No.
1063525 – incontestable (Ex. 463-H)), Roman Edging Paper Design (Reg. No. 0947706–
incontestable (Ex. 463-I); Reg. No. 1194868– incontestable (Ex. 463-AJ)), CAESARS WORLD
(Reg. No. 0995419– incontestable (Ex. 463-Y)), CAESARS WORLD (stylized) (Reg. No.
0995418- incontestable (Ex. 463-X)), THE PALACE COURT (Reg. No. 1128000– incontestable
(Ex. 463-AD)), CLEOPATRA’S BARGE (Reg. No. 0979106– incontestable (Ex. 463-P); Reg.
No. 1138113– incontestable (Ex. 463-AF)), SPANISH STEPS (Reg. No. 1146922– incontestable
(Ex. 463-AH)), CAESARS TAHOE (Reg. No. 1263220– incontestable (Ex. 463-AK); Reg. No.
1191413– incontestable (Ex. 463-AW)), CAESARS TAHOE (stylized) (Reg. No. 1186958–
incontestable (Ex. 463-AU); Reg. No. 1201555– incontestable (Ex. 463-AV); Reg. No. 1201511–
incontestable (Ex. 463-AX)), CAESARS WOMAN (Reg. No. 1532553– incontestable (Ex. 463-
AQ)), CAESARS WOMAN (stylized) (Reg. No. 1531548 – incontestable (Ex. 463-AN)),
CAESARS MAN (Reg. No. 1531549 – incontestable (Ex. 463-AO)), CAESARS MAN (stylized)

(Reg. No. 1538771 – incontestable (Ex. 463-AP)), CAESARS PALACE LAS VEGAS – NEVADA with Grape Girl Design (Reg. No. 1168663 – incontestable (Ex. 463-AS)), TOGA TEDDY (Reg. No. 1676542 – incontestable (Ex. 463-AT)), CAESARS MAGICAL EMPIRE (Reg. No. 2630525 (Ex. 463-AY)), EMPERORS CLUB (Reg. No. 1743663 – incontestable (Ex. 463-AZ)), FERENTINA (Reg. No. 2022361 – incontestable (Ex. 463-BA)), EMPERORS EVERYDAY GIVEAWAY (Reg. No. 1837096 – incontestable (Ex. 463-BC)), THE FORUM SHOPS AT CAESARS (Reg. No. 1829004 – incontestable (Ex. 463-BD)) LA PIAZZA (Reg. No. 1649800 – incontestable (Ex. 463-BE)), and CAESARS PALACE AT SEA (Reg. No. 1663829 – incontestable (Ex. 463-BF)), Grape Girl Design (Reg. No. 0884317 – incontestable (Ex. 463-C)), PALACE RESERVE (Reg. No. 1644190 – incontestable (Ex. 463-AB)).

14. These registered trademarks are used in interstate commerce, are valid and all but one, CAESARS MAGICAL EMPIRE, is incontestable. (Tr. 264). Because of CWI's outstanding reputation in the hospitality industry and the millions of dollars dedicated to its promotion, the CAESARS name is among the most famous in the industry and is world-renowned. (Tr. 119).

D. CWI's COLOSSEUM Mark

15. When it opened in August 1966, CAESARS PALACE included 680 guest rooms, a 980-seat showroom branded as CIRCUS MAXIMUS, a GARDEN OF THE GODS pool-spa complex, and a 35,000 square foot convention center called THE COLOSSEUM Convention Complex. (Tr. 51). Newspaper articles describing the opening of CAESARS PALACE property included references to THE COLOSSEUM convention center. (Tr. 54). At the time of the opening, Caesars Palace produced and distributed brochures and press releases that identified THE COLOSSEUM convention center. The materials use the same stylistic devices to distinguish THE

1 COLOSSEUM (e.g. Italics or all caps) as used to distinguish designations such as CAESARS
2 PALACE or CIRCUS MAXIMUS that would become federally registered. (Tr. 60-61, 73-74, Ex.
3 124, 126). Those brochures and press releases were circulated in interstate commerce. This
4 COLOSSEUM convention center in no way resembled the ancient Roman Coliseum. It did not
5 have elevated seating and was rectangular in shape. (Tr. 51-53; Ex. 115)

7 16. THE COLOSSEUM has been used to designate many different services offered in
8 relation to the convention center at Caesars Palace. (Ex. 124). Based on the testimony and exhibits
9 admitted at trial, it is clear that these services include entertainment services such as headliner acts,
10 televised events, live boxing and other sports events. (Tr. 99-103). THE COLOSSEUM was also
11 used in connection with casino and gaming services such as annual slot tournaments and sports
12 betting services. (Tr. 98-101, 105-108, Ex. 118, 442-M, 442-N, 442-L).

14 17. For instance, Exhibit 121 and 122 are examples of a ticket and invitation sent to
15 select people on CWI's mailing list promoting its Super Bowl party. Such Super Bowl parties were
16 held, with perhaps one or two exceptions, each year in THE COLOSSEUM facility and featured
17 gaming services. (Tr. 98-100, Ex. 121, 122). In order to comply with Nevada State gaming
18 regulations, one portion of THE COLOSSEUM facility was specially remodeled to include
19 overhead cameras and other security to comply with Nevada gaming regulations. (Tr. 98). THE
20 COLOSSEUM brand was also used in connection with food and banquet services. (Tr. 96-102,
21 Tr. 104-108 Ex. 121, 122, 442-A, 118, 442-L, 442-M, 442-N). Since August of 2001, Plaintiffs
22 have also offered for sale coffee mugs, bar soap and candles in various sizes bearing THE COLOS-
23 SEUM mark. (Tr. 121-122, Ex. 442-O).

26

1 18. Since the opening of Caesars Palace in April of 1966, it is estimated that at least
2 10,500,000 people have enjoyed some service offered under THE COLOSSEUM trademark at
3 Caesars Palace. (Tr. 117).

4 19. Caesars Palace has received multiple awards for the convention services offered
5 under THE COLOSSEUM mark. For instance, *Meeting & Conventions Magazine* awarded
6 Caesars Palace the Gold Key Award for its hotel and convention services. This is an annual award
7 given to the finest meeting properties worldwide, with winners nominated and chosen by Meetings
8 & Conventions corporate, incentive and association meeting planner subscribers. *Meetings in the*
9 *West* voted Caesars Palace one of the top 50 properties in the West for meetings based on a readers
10 survey. Caesars Palace was also awarded the 2000 Award of Excellence for its services for
11 corporate meetings and incentive travel by subscribers to *Corporate & Incentive Travel Magazine*.
12 (Tr. 117-121). The advertisements placed by CWI heralding these accomplishments included
13 prominent references to THE COLOSSEUM mark. (Tr. 117-118, Ex. 113, 137).

14 20. Since the opening in 1966 CWI has spent many millions of dollars promoting
15 CAESARS PALACE. Deborah Munch, Vice President of Public Relations, testified that because
16 THE COLOSSEUM mark is usually used in combination with CAESARS PALACE or another
17 version of the CAESARS mark, it is difficult for CWI to provide an exact estimate of the amount
18 of monies expended promoting THE COLOSSEUM mark. (Tr. 132). Based on reliable estimates,
19 the Court finds that CWI expended at least some amount over \$19 million in promoting THE
20 COLOSSEUM mark since the opening of CAESARS PALACE in 1966 until 2000. (Tr. 133).

21 21. The showroom at the Caesars Indiana gaming vessel bears the name COLOS-
22 SEUM. It in no way resembles the ancient Roman Coliseum. Like the COLOSSEUM Convention
23
24
25
26

Center at Caesars Palace, it is rectangular in shape and does not have elevated seating. (Tr. 123).
When CWI opened that showroom in November 2000, it issued promotional materials for the entertainment services offered in THE COLOSSEUM showroom in interstate commerce, and the opening was reported in the press. (Tr. 125-127, Ex. 132, 133, 134, 135, 136).

22. CWI also established a series of four hotels in Pennsylvania known as the Caesars Pocono Resorts. The main restaurant at Cove Haven, one of the 4 resorts constituting Caesars Poconos, was and is called THE COLOSSEUM. (Tr. 128-129). When PPE acquired CWI in 1999, it did not acquire Caesars Poconos. However, as part of the transaction, CWI has licensed the buyer to use certain trademarks, including the CAESARS and COLOSSEUM marks. (Tr. 128). THE COLOSSEUM dining room at Caesars Poconos has an exterior whose high arches and columns resemble the original Coliseum amphitheater from the ancient Roman Empire. (Ex. 151). The dining room is advertised on the Internet as THE COLOSSEUM dining room. (Tr. 130, Ex. 131). Ms. Munch testified that the licensee reports that from the opening in approximately 1980 until 1999, over \$50 million has been spent in promoting Cove Haven, including the restaurant services offered under THE COLOSSEUM mark. Ms. Munch also testified, based on information provided to her in the normal course of business, the Caesars Poconos resort has served more than 1,000,000 customers in THE COLOSSEUM dining room since its opening. (Tr. 128-132). The Court credits this testimony, which was not rebutted in any way.

23. As a result of the thousands of people who have utilized the various services offered at the convention center in Las Vegas under THE COLOSSEUM trademark, eaten at THE COLOSSEUM dining room in Pennsylvania, attended a performance at THE COLOSSEUM showroom in Indiana, purchased merchandise sold in connection with THE COLOSSEUM

1 trademark, and the extensive promotion by CWI of THE COLOSSEUM mark in connection with
2 the services referenced above, the Court finds there is considerable association by the public of
3 COLOSSEUM with CWI, and Caesars Palace in particular.

4
5 24. The strength of THE COLOSSEUM mark is also reflected by the extensive use by
6 third parties of THE COLOSSEUM mark in association with CWI. Since 1981, THE COLOS-
7 SEUM has been referred to in association with CAESARS properties in numerous articles in news
8 journals nationally and internationally. (Tr. 328-334, Ex. 181-186, Ex. 188-276, Ex. 280, 288,
9 299-320, 326-334, 337-357, 360-416, 418-419).

10 **E. CWI's EMPIRE Family of Marks**

11
12 25. CWI has used several marks with respect to their properties that incorporate the
13 EMPIRE mark. The marks EMPIRE (Ex. 441-AU), and THE ROMAN EMPIRE (441-X),
14 (together with other marks identified below, the "EMPIRE Family of Marks") have been used
15 synonymously with CAESARS PALACE and the services offered there from since at least 1968,
16 as evidenced by a wide variety of promotional materials.

17
18 26. Since at least the early 1990's, the EMPIRE and ROMAN EMPIRE marks have
19 been used on maps of the Caesars property entitled "GUIDE TO THE EMPIRE." (Tr. 64-66, Ex.
20 114, 441-E, 441-D). The EMPIRE mark has also been used in promotional materials in numerous
21 ways including ONWARD TO THE EMPIRE (Ex. 125), EXPERIENCE AN EMPIRE (Ex. 441-
22 AJ), and BEHOLD THE EMPIRE (Ex. 441-P). Until recently, Caesars Palace offered special
23 entertainment at CAESARS MAGICAL EMPIRE (Ex. 463-AY). As a large public facility,
24 Caesars Palace is constantly renovating, modifying, or simply maintaining its physical structure.
25 Whenever this occurs, CWI -- as does virtually every public facility -- places a sign apologizing for
26

1 any inconvenience. However, CWI customizes these notices to fall within its Roman-Grecian
2 theme and headlines these notices with the trademarks REBUILDING AN EMPIRE (Ex. 441-Y)
3 or THE EMPIRE EXPANDS (Ex. 441-AM, 441-AL). For the past three years, a neon sign
4 reading WELCOME TO THE EMPIRE hangs above an entrance at Caesars Palace. (Tr. 141-142,
5 Ex. 441-AX). CWI has also used the mark THE JEWEL OF THE EMPIRE to distinguish Caesars
6 Palace from its other Caesars properties. (Tr. 67-68, 124, 134).

8 27. CWI uses the EMPIRE Family of Marks at its other Caesars facilities. Caesars
9 Indiana distinguishes itself from its sister properties as THE GLORY OF THE EMPIRE (Tr. 124),
10 inviting people to EXPERIENCE AN EMPIRE (Ex. 441-AJ) and watch THE EMPIRE'S
11 TOUGHEST GLADIATORS (Ex. 441-AO, 441-AP). CAESARS ATLANTIC CITY offers guests
12 a guide to RESTAURANTS OF THE EMPIRE, as well as pamphlets, which say WELCOME TO
13 THE EMPIRE CAESARS ATLANTIC CITY (Tr. 67, Ex. 441-E). Caesars Tahoe identifies itself
14 within the group of Caesars properties as the MOUNTAIN EMPIRE (Tr. 134).

16 28. CWI is also the owner of three additional relevant registrations namely CAESARS
17 MAGICAL EMPIRE (Registration No. 2,630525) (Ex. 463-AY), the EMPERORS CLUB
18 (Registration No. 1,743663) (Ex. 463-AZ), and EMPERORS EVERYDAY GIVEAWAY
19 (Registration No. 1,837096) (Ex. 463-BC).

21 29. The foregoing demonstrates Plaintiffs' use of the EMPIRE Family of Marks dates
22 back to at least 1968, and that the amount Plaintiffs have invested in using and promoting the
23 EMPIRE Family of Marks in interstate commerce is a multiple of the substantial amounts
24 expended on behalf of THE COLOSSEUM mark. (Tr. 134-149, Ex. 441-A & B, 441-D-F, 441-K-
25 M, 441-P, 441-X & Y, 441-AE, 441-AI - AS, 441-AU & AV, 441-AX)
26

1 **F. Plaintiffs' Decision to Build a New Entertainment Center in Las Vegas.**

2 30. In the 1990s, CWI began to face serious competition as the industry leader in Las
3 Vegas as properties such as the Venetian, Bellagio and Mandalay Bay opened. (Tr. 149). All
4 these new properties were targeting the same customers that Caesars Palace had developed over its
5 many years. (Tr. 149-150). In order to maintain the prestigious reputation of CAESARS in Las
6 Vegas and solidify the perception of PPE as the premiere gaming company in the world, PPE
7 (which by then owned CWI) decided to build a new entertainment complex at CAESARS
8 PALACE. (Tr. 150).

9
10 31. PPE and CWI were already in discussions at this time with Celine Dion, the well-
11 known Canadian singer, concerning the creation of a new production in which she would star. (Tr.
12 151). Ms. Dion and her husband/manager (Rene Angelil) had already begun discussions with
13 Sceno Plus, a Canadian firm specializing in designing and building unique venues. (Tr. 386).

14
15 32. PPE and CWI, together with Ms. Dion and Mr. Angelil, described the requirement
16 of this space for the type of show that was contemplated as well as the site within the Caesars
17 Palace property where this venue would be constructed. (Tr. 386-387).

18
19 33. Sceno Plus took this information and using its own creative talents developed a
20 place for a building that would fit within the existing Roman-Grecian theme permeating Caesars
21 Palace. (Tr. 385-396, Ex. 475, 476, 477).

22 34. It was Sceno Plus that developed the idea of constructing a building resembling the
23 ancient Roman Coliseum and suggested naming it COLISEUM, and then presented the idea to
24 PPE. Sceno Plus's concept has a large circular shape with columns and arches mimicking the
25 inside of the ancient Roman Coliseum. The stage has been built to have lifts from under the stage
26

1 to bring up sets and performers the same way that there were lifts in the ancient Roman Coliseum
2 to bring animals and gladiators to the center stage. However, the audience will not totally encircle
3 the stage as it did at the ancient Roman Coliseum. (Tr. 391-396, Ex. 476, 477).

4 35. PPE and CWI approved the selection of the name (with a modified spelling to
5 dovetail the spelling used for THE COLOSSEUM convention complex at Caesars Palace) because
6 the name was consistent with the well-known Roman-Grecian theme associated with CWI. (Tr.
7 398-399).

9 36. Plaintiffs closed the original COLOSSEUM convention center in August of 2000.
10 (Tr. 177). On April 10, 2001, PPE publicly announced plans to build a new 4,000 seat theater
11 connected to, and incorporated within, CAESARS PALACE, also to be called THE COLOS-
12 SEUM AT CAESARS PALACE, but which will from time to time be referred to only as
13 COLOSSEUM. (hereinafter, "THE COLOSSEUM") (Tr. 150-151, Ex. 37).

15 37. THE COLOSSEUM is located at the apex of Las Vegas and Flamingo Boulevards,
16 where it can be seen from virtually anywhere on the Las Vegas Strip, and is positioned promi-
17 nently in front of CAESARS PALACE. The decision to build such a prominent building is part of
18 PPE's strategic competitive response to the "New Las Vegas." (Tr. 387-391). THE COLOS-
19 SEUM mark was also prominently featured on the actual construction site at Caesars Palace. For
20 instance, one of the signs stated "Battles Raged There. Chariots Roared There. Beasts Ravaged
21 There. (And Now Celine Will Play There.) COLOSSEUM. The World's First Stage. Coming
22 Soon To The Empire." (Tr. 240, Ex. 28).

24 38. Construction began shortly after the April 2001 announcement. PPE expects the
25 facility will cost approximately \$95 million to construct. (Tr. 239). On May 22, 2002, PPE gave
26

1 details of the premiere engagement at THE COLOSSEUM, announcing that Celine Dion will be
2 appearing 200 nights a year in a Franco Dragone production for the next three years. The
3 announcement stated that THE COLOSSEUM would open in March 2003. (Tr. 152, Ex. 68).

4
5 39. As part of the May 22, 2002 announcement, Celine Dion appeared at THE
6 COLOSSEUM with the construction crew, an event that attracted significant nationwide media
7 coverage in both print and televised media. (Tr. 153).

8 40. THE COLOSSEUM mark will not only be used to designate the entertainment
9 services offered by Plaintiffs as the new performance home for Celine Dion, it will also be used to
10 designate numerous other services, including T.V. specials, boxing events, concerts, conventions,
11 and parties for special occasions like the Super Bowl. (Tr. 184). In addition to the goods noted
12 above, after the May 22nd announcement CWI commenced use of THE COLOSSEUM at Caesars
13 Palace mark on t-shirts and anticipates expanding the goods to be branded with this mark. (Ex.
14 34).

15
16 41. PPE and CWI have already spent \$2 million in marketing and promoting THE
17 COLOSSEUM AT CAESARS PALACE and the services to be offered in connection therewith.
18 (Tr. 159). These promotion efforts include pop-up advertisements on the Caesars web site and
19 advertisements in the print media. (Tr. 155, Ex. 27). In her testimony, Ms. Munch reliably
20 estimated that over 1,000,000 visitors have accessed the Caesars web site since it began THE
21 COLOSSEUM promotions. (Tr. 155-156). In all, PPE has spent or committed to spend \$4 million
22 in promoting the new COLOSSEUM. (Tr. 156).

23
24 42. If PPE and CWI are prevented from using THE COLOSSEUM mark, they would
25 suffer financially and through loss of goodwill. Ms. Munch testified that the cost to PPE and CWI
26

1 in having to redo the signs, the tickets, and all of CWI's promotional material would be very
2 significant. (Tr. 159) In addition, PPE and CWI could not recapture the favorable media exposure
3 already obtained if they could not use this mark. (Tr. 159-160; 335-36).

4 43. If they cannot use THE COLOSSEUM mark, Plaintiffs also stand to lose consider-
5 able goodwill with: (a) customers and others in the public who associate THE COLOSSEUM
6 mark with CWI in general, and Caesars Palace in particular including the services to be offered at
7 the new entertainment complex; and (b) their business partners involved in the March 2003
8 opening at THE COLOSSEUM and who have promoted the entertainment services to be offered at
9 this new facility under THE COLOSSEUM mark. (Tr. 160; 335-36)

10
11 **G. Cyrus Milanian's Business and His Claim of Trademark Rights.**

12 44. As explained below, Milanian was barred from testifying for refusing to appear at
13 his deposition. Therefore there is little evidence about his background. A self-described
14 "Internettor," the only business connected to him operates under his personal name and purports to
15 offer telephone and ISP services. (Tr. 291-292, Ex. 7). Milanian owns at least one domain name,
16 jimcrow.com, that has been offered for sale. (Tr. 293-295, Ex. 1, 4). There is no evidence that
17 Milanian has any meaningful experience in the casino or resort hotel business. Indeed, according
18 to a Dun & Bradstreet report, on May 26, 2002, Milanian told an interviewer that he operated a
19 telephone communications company under his personal name. (Ex. 7) Thus, it appears that as of
20 May 26, 2002, only days before he contacted Plaintiffs for the first time, that Milanian did not
21 describe himself as a consultant for the hotel or casino industry. (Ex. 7). He does have consider-
22 able experience in filing trademark applications, having filed approximately 156 of them since
23 1998. (Tr. 295-296, Ex. 153).

1 45. Based on the testimony offered by Plaintiffs, the Court finds that Milanian's
2 business model is to apply for a series of trademarks for a particular theme that he anticipates (or
3 expects) will be a theme for a casino or resort hotel. The vast majority of these applications have
4 been filed on an intent-to-use basis. (Tr. 296).

5
6 46. For example, Milanian applied for numerous trademarks relating to a Titanic
7 themed casino and a casino themed after the city of San Francisco. (Ex. 153). Significantly,
8 Milanian did not claim an intent to use these marks in connection with casino or hotel services, but
9 rather in connection with "Business Management of Resorts Hotels [sic], Casinos and Theme
10 Parks for Others and Products Merchandising [sic] Services." (E.g., Ex. 170).

11
12 47. The Court finds that this description of services was an intentional misrepresenta-
13 tion and that, in fact, these trademarks were filed for the purpose of assigning them to casinos and
14 hotels for those businesses to use in connection with their services. For instance, on one website, a
15 printout of which was submitted by Milanian in connection with his Statement of Use¹ to
16 substantiate his use of the mark "The New Las Vegas" for "Business management of resort hotels,
17 casinos and theme parks for others in International Class 25; Product merchandising in Interna-
18 tional Class 35; and Real estate development, in International Class 37," he stated quite clearly
19 that:
20

21 Cyrus Milanian offers for sale and or rent/lease in the United States
22 of America and/or Global marketplace, and/or internet; *license*
23 *rights and/or buyout rights* for goods and services advertising for
24 sale or rent/lease in exchange for royalties/compensationary for the
following trademarks, servicemarks." (Ex. 163, emphasis added).

25 ¹ A Statement of Use is filed in an intent-to-use application to demonstrate that the Mark is
26 actually in use. A certificate of registration will only issue for an intent to use application after a
Statement of Use is filed and accepted.

1 48. The examiner found that this specimen was unacceptable because it did "...not.
2 show use of the service mark in relation to the identified service." Subsequently, Milanian
3 amended the language. Six months later, the same web-site, submitted as a specimen for a
4 different mark, stated:
5

6 Cyrus Milanian offers for a fee his services, namely, business man-
7 agement of resort hotels, casinos and theme parks for others and
8 merchandising services for others internationally, and/or in the
United States of America, under one or more of the following trade-
mark/service marks mentioned under its own title. (Ex. 159).

9 49. The Court finds this change in the wording of his website an example of Milanian's
10 bad faith intent in attempting to register marks, for which he has neither trademark usage nor a
11 bona fide intent to use.
12

13 50. There is other evidence that Milanian's claim of intended use of consulting services
14 was a sham. Milanian owns patents relating to the creation of a Titanic-themed resort and casino.
15 For instance, patent number 6,073,403 includes the following statement:
16

17 "A fully integrated building complex comprising a body of water, a first *housing*
18 *structured* to resemble the Titanic and a generally domed-shaped second *housing*
19 *structured* to resemble an iceberg. The first and second housings are each situated
20 within the body of water, resting on the bottom thereof, and a second portion is
21 disposed above the body of water. The interior of the first and second housing are
22 divided into a plurality of levels and may include an entranceway/lobby, *guest*
23 *quarters, restaurant and entertainment facilities, a casino and other hotel ameni-*
24 *ties*, such as health clubs, swimming pools, beauty salons, retail shops, etc. Access
between the first housing and the shore is provided by a generally tubular-shaped
enclosed gangway having at least one conveyor belt-like people mover. Access
between the second housing and the shore is provided by a generally tubular-shaped
enclosure having one or more motorized or tram-like vehicles operating therein.
Access between the first and second housings is provided by a generally tubular-
shaped tunnel having one or more motorized or tram-like vehicles operating
therein." (Defs. Ex. O, emphases added).
25

26

1 51. The Court finds that the filing of this and other patents (Def. Ex. L, M) indicates
2 that Milanian had developed a concept for what he believed to be an innovative business method.
3 It strains credibility to believe that Milanian was intending to offer consulting services under
4 numerous Titanic-themed trademarks at the same time that he had invested in the registration of
5 three patents relating to the operation of a Titanic-themed resort. The statements on his website
6 clearly evidence that these Titanic trademarks were intended to be part of the "package" sold or
7 licensed to an interested company with the ability to implement the patent claims under the related
8 trademarks. Indeed, Milanian's counsel implicitly conceded this connection when he asked
9 Plaintiff's Vice President of Corporate Law, Mark Clayton, "... it [isn't] reasonable to you that
10 someone who had invented and obtained patents on a complex that could take the form of a replica
11 of the Titanic would want to apply for trademarks to try to protect that concept further?" (Tr. 366).
12

13 52. Milanian's pattern of bad faith is further evident by the fact that, with respect to
14 Titanic-themed marks, Milanian filed his first application six weeks after being told by Cunard
15 that it was not interested in licensing its trademarks. *See Cunard Line Limited v. Cyrus Milanian*,
16 Opp. No. 116,277 (T.T.A.B. July 28, 1998). (Ex. 5). To quote the T.T.A.B.:
17

18 A final comment is in order. It has not gone without notice that applicant filed the
19 involved application some six weeks after receipt of the letter advising him that
20 opposer was not inclined to license or lease any of its trademarks. Opposer
21 contends that is was not even aware from the business plan and the parties' discus-
22 sions that applicant desired to use and register this mark. Of course, applicant
23 contends otherwise. However, if, as applicant maintains, opposer knew that
24 applicant desired to use an register the flag design mark, the June 1, 1998 letter
25 from opposer should have at least raised a question in applicant's mind as to
26 whether the flag design mark was one of the trademarks opposer was not inclined to
license or lease. Stated differently, there should have been a question in applicant's
mind as to whether opposer was claiming rights in the flag design mark. (Ex. 5).

.....

1 53. As indicated above, Milanian's applications are filed on an intent-to-use basis,
2 which requires a good faith bona fide intent to use the marks in connection with the sale of goods
3 or services. The Court finds that Milanian deliberately misstated the claimed services as consult-
4 ing because he knew there was no way he would ever be able to show proof of use in connection
5 with an actual hotel or casino. On the other hand, it appears that Milanian believed he could prove
6 use of the marks in consulting services by creating a website offering these services and displaying
7 the marks on the website.
8

9 54. When the trademark office refused to accept the website quoted above as evidence
10 of use for consulting services, (see Ex. 163), Milanian modified the website. There were subse-
11 quent revisions, presumably to address other issues raised by the various Examining Attorneys at
12 the U.S Patent and Trademark Office. For instance, the website resortscenter.com now reads:
13

14 Cyrus Milanian offers for a fee his services, namely, business management of resort
15 hotels, casinos and theme parks for others and merchandising services for others
16 internationally, and/or in the United States of America, under one or more of the
17 following trademark/service marks mentioned under its own title. Cyrus Milanian
18 also offers a fee to consult on business management of resort hotels, casinos, and
19 theme parks and product merchandising services for others under one or more of
20 the following trademarks mentioned under its own title. (Ex. 485)

21 55. The web site then lists over a hundred trademarks, including the ones for which he
22 is attempting to show use. (Ex. 485).

23 56. Milanian's business model has not been successful. There is no evidence that he
24 has generated any sales of his business management services offered through his web sites.
25 Indeed, Milanian's approach --- filing for many related trademarks for a theme for a prospective
26 casino or resort hotel and then offering "business management services" under those trademarks --
 - is inconsistent with the approach used by experienced developers or consultants who provide

1 merchandise such as souvenirs and related goods including slot machines.

2 61. On August 21, 2001, Milanian filed another intent to use application with the
3 USPTO (Serial No. 76/302,255) for ROME LAS VEGAS COLOSSEUM, for "resort hotels,
4 casinos, and theme park business management, development, and product merchandising ser-
5 vices." (Ex. 157). Notwithstanding these filings, Milanian took no steps to contact Plaintiffs. The
6 Court concludes that this failure to contact Plaintiffs was not accidental, but was intentional.
7 Milanian's pattern of conduct and obvious interest in assigning his rights to Plaintiffs support the
8 conclusion that Milanian believed that the longer he waited to contact Plaintiffs, the more time and
9 money Plaintiffs would expend in the mark thereby raising the value to any claim made by
10 Milanian.
11

12 62. On April 18, 2001, Milanian filed an intent to use application for THE EMPIRE
13 mark (Serial No. 78/059,056) for "business management of resort hotels, casinos and theme parks
14 for others and products merchandising services." (Ex. 159). Thereafter, on October 21, 2001,
15 Milanian filed an intent to use application for THE ROMAN EMPIRE mark (Serial No.
16 78/090,495) for "business management and development or casinos, hotel resorts, restaurants,
17 shopping malls, convention centers, theme parks, real estate, and product merchandising." (Ex.
18 156).
19

20 63. As noted above, Plaintiffs own the EMPIRE Family of Marks. Milanian's
21 applications for the Empire marks, for which Plaintiffs had not obtained federal registrations but
22 strong common law rights, appears to have been part of an effort to increase the value of any
23 settlement to Milanian. Indeed, while subsequently withdrawn, on October 27, 2001, Milanian
24 filed an intent to use application (Serial No. 78/090,499) for JULIUS CAESAR for "business
25
26

1 management and development of casinos, hotel resorts, restaurants, shopping malls, convention
2 centers, theme parks, and products merchandising services.” Outside trademark counsel for Park
3 Place Entertainment wrote a cease and desist letter to Milanian on May 3, 2002. (Tr. 316-317, Ex.
4 469). Milanian later abandoned the application. (Tr. 317). Nevertheless, the timing of this
5 application together with the other EMPIRE and COLOSSEUM applications supports the Court’s
6 finding that Milanian was purposefully seeking to obtain as much leverage as possible in the
7 negotiations he would shortly commence. The Court also finds that this pattern of conduct further
8 demonstrates Milanian’s pattern of registering marks for which he has no legitimate use, but for
9 the sole purpose of interfering with the rights of others.²
10

11 64. It was not until after PPE’s May 22, 2002 announcement that Celine Dion would be
12 appearing for a long-running opening engagement at THE COLOSSEUM opening in March of
13 2003 that Milanian contacted Plaintiffs regarding his alleged rights in The COLOSSEUM mark.
14 On or about June 1, 2002, Milanian telephoned PPE’s corporate headquarters in Las Vegas,
15 Nevada and demanded to speak with its CEO, CFO or other senior management personnel alleging
16 that PPE was violating his trademark rights in the term COLOSSEUM. (Tr. 289-291).
17

18 65. During the next ten days, Milanian filed two new intent to use applications for THE
19 COLOSSEUM, namely Serial No. 78/134,219 for business development services (Ex. 158) and
20 Serial No. 78/132,978 for slot machines (Ex. 155), even though he neither had a gaming license
21 nor filed an application for a gaming license, which is required in order to manufacture or
22 distribute slot machines. Defendants have admitted that they lacked a bona fide intent to use THE
23
24

25 ² Around this same time, Milanian also registered a variety of domain names, including three
26 which contained the mark COLOSSEUM. (Tr. 293)

1 COLOSSEUM mark for slot machines because they did not have and had not applied for a gaming
2 license. (See Answer at ¶ 14).

3 66. On or about June 11, 2002, representatives of PPE and CWI held a telephone
4 conference with Milanian and his first attorney, Nicholas Karamanos of Pennsylvania. During this
5 June 11, 2002 conference call, Plaintiffs were informed by Milanian's counsel that he had filed a
6 Statement of Use for THE COLOSSEUM (Serial No. 78/059,830) on June 6, 2002, and that the
7 evidence of use was a copy of the "resortscenter.com" web site which, as discussed above, listed
8 COLOSSEUM as one of the trademarks under which Milanian purports to offer business
9 management services.³ (Tr. 316, Ex. 154). Plaintiffs understood that Milanian and his counsel
10 highlighted the fact that a Statement of Use had just been filed because an action for trademark
11 infringement cannot be commenced until a mark has been used in commerce. (Tr. 418-421).

12 67. Plaintiffs advised Milanian of CWT's well-established common law trademark
13 rights in THE COLOSSEUM dating back to 1966, and demanded that Milanian abandon any
14 claims to THE COLOSSEUM, including his applications for THE COLOSSEUM, as well as any
15 corresponding domain names. (Tr. 317). Plaintiffs made several further attempts to convince
16 Milanian to abandon his claim in THE COLOSSEUM mark. He did not respond to those
17 overtures, and has refused to accede to Plaintiffs' requests. (Tr. 322-323, Ex. 11).

18 68. Meanwhile, on June 5, 2002, CWI filed an intent to use application with the PTO
19 for COLOSSEUM (Serial No. 76/417,751, Class 41) for "education and entertainment services,
20 namely operating a sports, entertainment, concert, convention and exhibition arena and the
21

22
23
24
25

³ Milanian claimed that his initial use of COLOSSEUM was in May 2000. However, his web sites do not
26 list COLOSSEUM until August 2001.

1 production or co-production of sports and entertainment events, concerts, conventions and
2 exhibitions for public exhibition, viewing and for radio, television and cable broadcasts.” (Tr.
3 273; Ex. 14). This application was filed on an intent to use basis because PPE wanted to make its
4 claims a matter of public record but needed to review its archives for specimens illustrating its use
5 of COLOSSEUM since the COLOSSEUM convention center, as noted above, had already closed.
6 (Tr. 274). CWI subsequently filed an Amendment to Alleged Use claiming August 6, 1966 as the
7 date of first use. (Tr. 274).

9 69. The USPTO issued an office action refusing registration of this mark because it
10 found THE COLOSSEUM mark to be merely descriptive of the services. It also questioned
11 whether the specimens submitted were sufficient. CWI explained that the one specimen submitted
12 to the USPTO did not include all of the exhibits made available at this trial. CWI has until May
13 29, 2003 to respond to the USPTO and has not yet responded. (Tr. 273-275, Ex. 14). The Court
14 notes that the USPTO did not find CWI’s mark to be generic. (Ex. 14)

16 70. On September 24, 2002, Plaintiffs’ outside counsel received a demand on behalf of
17 defendants from the law firm of Brinks, Hoffer, Gilson and Lione indicating that Milanian
18 continued to believe he had potential claims against PPE and CWI. (Ex. 11). While the letter was
19 written on behalf of New Las Vegas Development, LLC, Brinks Hoffer indicated to Plaintiffs’
20 outside counsel that Milanian was connected to this entity. (See Tr. 324).

22 71. Plaintiffs concluded as a result of this letter that in order to protect their \$95
23 Million dollar investment in THE COLOSSEUM that they needed to be proactive. (Tr. 354). On
24 October 2, 2002, Plaintiffs filed this declaratory judgment action, alleging that Defendants⁴

25 ⁴ In addition to Milanian, Plaintiffs sued NLVD, on whose behalf plaintiffs received the September 24,
26 2002 letter referenced above from a law firm that was apparently engaged by both Milanian and NLVD.

1 violated the Lanham Act and committed unfair competition under Nevada law with respect to
2 COLOSSEUM and EMPIRE trademarks. Plaintiffs sought a declaration of their superior rights in
3 those marks, an order enjoining defendants from using the marks, and for a consolidation of the
4 trial on the merits under Rule 65.

5
6 72. Defendants filed an answer on November 26, 2002 through the law firm of
7 Hunterton & Associates. The answer denied the salient allegations in the complaint except it
8 admitted that Milanian lacked a bona fide intent to use THE COLOSSEUM on gaming machines,
9 namely slot machines and gambling devices because he does not have and has not taken steps to
10 obtain a gaming license. (See Answer at ¶ 14). While the Answer did not include any counter-
11 claims, it did assert two affirmative defenses of particular relevance: affirmative defense No. 5 that
12 Plaintiffs are estopped from asserting claims to the trademarks, and affirmative defense No. 6 that
13 defendants possess common law and/or contractual rights to the trademarks. No facts were pled to
14 support these defenses.
15

16 73. During a conference held by the Court on December 19, 2002, Hunterton &
17 Associate's Motion to Withdraw as Counsel was granted. Pursuant to the Order entered that same
18 day, the Court ordered a consolidated trial on the merits to commence on January 21, 2003.
19

20 **I. Defendants Submit The 1996 Documents.**

21 74. On January 9, 2003, the last day by which Defendants were to file a trial brief,
22 Gregory F. Buhyoff, Esq., on behalf of both Defendants, filed a Motion for Summary Judgment,
23 arguing that Plaintiffs were using the mark COLOSSEUM as a generic term and thus had no
24

25 After trial, Plaintiffs and NLVD filed a Stipulation of Dismissal based on certain representations made by
26 NLVD's principal, Nicholas Karamanos.

1 standing to assert the claims in their Complaint.

2 75. This motion also included as exhibits certain documents purporting to show that in
3 May 1996, Milanian submitted a proposal to ITT, the then-owner of CWI, concerning the
4 development at Caesars Palace of a replica of the ancient Roman Coliseum and other ancient
5 landmarks. This proposal specifically states, "[t]he following are trade secrets and intellectual
6 properties of Mr. Cyrus Milanian." (Def. Trial Brf, Ex. H).

7 76. Buhyoff's Affidavit also included two other documents purporting to show that
8 CWI apparently lost this proposal, and had agreed to maintain the confidentiality of any mental
9 impressions revealed in Milanian's proposal. (Def. Trial Brf., Exs. I, J). Milanian emphasized his
10 intellectual property rights multiple times, both in the letter he sent to Rand Araskog, then
11 Chairman of CWI and ITT, where he asks to, "Please regard them all as the Trade Secrets," then at
12 the end of his Marlania proposal where he writes "*TM/SM Marks: properties of Cyrus Milanian.
13 Copyright © 1990-1996 Cyrus Milanian, all rights reserve under US and/or international laws, no
14 part of this proposal may be copies or reproduced, duplicated, in any manner, shape or form
15 without the prior written agreement, from Mr. Cyrus Milanian. Violaters are subject to civil and
16 criminal prosecutions." (Def. Trial Brf., Ex. H)

17 77. ITT subsequently sold CWI to Starwood in approximately 1998. (Tr. 50). As noted
18 above, CWI was then acquired by PPE on December 31, 1999.

19 78. Witnesses employed by PPE and CWI stated that they had no knowledge of any of
20 these documents and had never heard of any proposal from Mr. Milanian until they saw these
21 documents. (Tr. 157, 241). The testimony also established that each CWI person involved with
22 these documents was no longer working with CWI when Plaintiffs began discussions with Patrick
23
24
25
26

1 services in connection with a new resort hotel or casino.

2 57. Donald Chandler, PPE's Vice President of Architecture and Design, testified that
3 he worked with several consulting companies with respect to PPE's casino business. Indeed, prior
4 to being employed by PPE, Mr. Chandler has experience offering consulting services (Tr. 231).
5 Mr. Chandler testified that he was not aware of any company that offered pre-registered trade-
6 marks as part of its services. (Tr. 241-245).
7

8 58. No evidence refutes this testimony. Thus, this Court finds on the credible
9 testimony and evidence presented at trial that the accepted and standard industry practice is to
10 provide consulting or management under the firm's own name, not under one or many trademarks
11 that would be used by the consultant's clients in its business.
12

13 **H. Milanian's Claim of Trademark Rights in COLOSSEUM and EMPIRE**

14 59. On April 23, 2001, less than two weeks after PPE announced the imminent
15 commencement of construction of a new 4,000 seat showroom to be called THE COLOSSEUM,
16 Milanian filed an intent to use application with the USPTO (Serial No. 78/059,830) for THE
17 COLOSSEUM, for "business management of resort hotel, casinos, and theme parks for others and
18 product merchandising services." (Ex. 154).
19

20 60. Based on Milanian's efforts, however unsuccessful, to market his services to hotels
21 and casinos such as those operated by PPE and CWI, as well as the timing of this filing, the Court
22 finds that at the time Milanian filed this application he had knowledge of Plaintiffs' use of its
23 COLOSSEUM marks and their intent to use COLOSSEUM in connection with the services to be
24 offered at the new entertainment complex. The Court also finds that Milanian knew that the use of
25 THE COLOSSEUM mark for these services would also inevitably lead to the use of the mark on
26

1 Bergé with respect to the showroom for Celine Dion. (Tr. 158).

2 79. In addition, PPE had reviewed CWI's building proposals in 2000 (after PPE bought
3 CWI) and found nothing in those files about a building a replica of the ancient Roman Coliseum.
4 (Tr. 232). PPE's in-house counsel, Mark Clayton, testified that he had reviewed the current legal
5 files and found no copies of any of these documents. (Tr. 314). Of course, this would be
6 consistent with the fact that they had been lost some seven years ago.

7
8 80. At trial, Plaintiffs called Patrick Bergé of Sceno Plus who testified that as early as
9 1991 – five years before CWI was contacted by Milanian -- he had been retained by CWI to design
10 a facility to house what became known as Cirque de Soleil's "O". The facility that Bergé designed
11 was also to be a replica of the ancient Roman Coliseum and that he suggested calling the building
12 Coliseum. The project, however, did not proceed. (Tr. 381).

13
14 81. Bergé further testified that he was retained by CWI again in 2000 to develop a new
15 venue in which Plaintiffs would host a show featuring Celine Dion. Bergé's testimony, which was
16 un rebutted by Defendants and which the Court credits, establishes that he developed the concept of
17 designing this showcase for Celine Dion as a replica of the Roman Coliseum and the idea of
18 calling it "Coliseum."⁵ This testimony was supported by the plans and submissions Bergé and his
19 company made to PPE and CWI. (Tr. 389-391, Ex. 475, 476, 477).

20
21 **J. Milanian's Failure To Appear For Deposition And The Aborted Settlement.**

22 82. On December 31, 2002, Plaintiffs noticed the deposition of Mr. Milanian for
Monday, January 13, 2003. Mr. Milanian failed to appear at this deposition and did not notify

⁵ As noted above, the spelling was changed by Plaintiffs to dovetail the earlier version of The COLOSSEUM Convention Center.

1 Plaintiffs that he would not be appearing until that day.

2 83. On January 14, 2003, the Court held a court conference with respect to this missed
3 deposition and was advised that the parties were discussing settlement. The parties were directed
4 by noon on January 15, 2003 to either settle this matter or agree to a new mutually acceptable time
5 for the Milanian deposition.
6

7 84. On January 15, 2003, the Court was advised that no settlement had been reached.
8 Mr. Milanian's counsel provided the Court and Plaintiffs' counsel with a letter from a physician,
9 Doctor Robert W. Brenner, stating that Mr. Milanian could not testify due to "generalized anxiety,
10 panic attacks and depression."
11

12 85. The Court held that this physician's letter was not sufficient to justify Milanian's
13 failure to attend his deposition. The letter did not indicate when Milanian's condition commenced
14 or what treatment was being provided. The Court therefore directed that Milanian would be barred
15 from testifying at trial and that it would consider favorably an application from Plaintiffs for its
16 fees in connection with preparing for the deposition. The Court also indicated that the motion for
17 summary judgment was untimely but accepted these papers in lieu of a trial brief.
18

19 86. On January 16, 2003 the parties believed that they had settled this matter, and were
20 prepared to call the Court that morning to put the settlement on the record. However, on January
21 17, 2003, Milanian refused to settle this matter because of an alleged disagreement over whether
22 the settlement would include a general release by him of all claims or just the trademark claims.
23

24 87. Apparently, Milanian believed that after settling his "trademark" claims, he should
25 still be entitled to bring a claim or claims based on the events in 1996.
26

....

1 88. On January 17, 2003, Plaintiffs moved orally to enforce the claimed settlement,
2 which the Court denied. At that same time, Mr. Buhyoff moved to withdraw as counsel in favor of
3 Melvin Silverman. Melvin Silverman advised the Court that "many days" would be required to
4 prepare for trial and again represented, without any further medical substantiation, that Milanian
5 was not able to attend the trial.
6

7 89. The Court refused Mr. Buhyoff's motion to withdraw on the eve of trial and also
8 ruled that the trial would go forward as scheduled. Later that day, Mr. Silverman filed an
9 appearance and papers to be admitted *pro hac vice*.
10

11 90. On January 20, 2003, Mr. Buhyoff advised Plaintiffs' counsel that Mr. Milanian
12 was in Nevada and requested Plaintiffs' consent to allow him to testify. Plaintiffs refused.
13

13 **K. The Parties' Motions During The Trial.**

14 91. On January 21, 2003, Defendants moved this Court to reconsider its order banning
15 Mr. Milanian from testifying. The affidavit submitted in support of this motion by Mr. Milanian
16 contradicted his previous statements. Indeed, a second doctor's letter was attached in further
17 support of the January 14, 2003 letter. Inexplicably, this letter was dated January 13, predating the
18 letter it sought to explain. This submission only reinforced this Court's conclusion that the
19 decision to bar Mr. Milanian from testifying was correct.
20

21 92. Defendant also moved to stay this trial in order to allow the question of the parties
22 trademark rights to be adjudicated by the Trademark Trial and Appeal Board. Thus, Milanian
23 continued to assert some rights in THE COLOSSEUM and to contest Plaintiffs' rights. The Court
24 denied this motion.
25

26

1 93. Plaintiffs moved to bar Defendants from presenting any witnesses in light of these
2 new facts, a motion the Court also denied.

3 94. Plaintiffs also filed a motion to reconsider their request for the Court to enforce the
4 purported settlement. That motion was also denied.

5 95. Finally, Plaintiffs moved this Court for a finding that any claims by Milanian with
6 respect to the 1996 events be deemed barred as compulsory counterclaims that were not raised.
7 The Court took that motion under submission and will address it below.

8 96. Defendants' witness list identified Peter Boynton, the former CEO of CWI, who
9 wrote one of the letters attached to Mr. Buhyoff's affidavit in support of Defendant's Motion for
10 Summary Judgment and then submitted to the Court as a trial brief. On January 22, 2003,
11 defendants advised that Mr. Boynton would not be able to appear in Las Vegas and requested that
12 he testify by telephone. (Tr. 368). The Court indicated that it was not inclined to permit such a last-
13 minute arrangement. (Tr. 370).

14 97. Plaintiffs advised the Court that they had learned that one of the lawyers assisting
15 Defendants' counsel of record had been in direct contact with Mr. Boynton and had questioned
16 him about the 1996 events. According to representations made by this attorney, Michael Santucci,
17 Mr. Boynton represented that he knew nothing about Mr. Milanian or the proposal contained in the
18 1996 documents. (Tr. 373-374).

19 98. The Court found that this contact with Mr. Boynton was a violation of the Nevada
20 Rules of Professional Conduct which prohibit *ex parte* contact with employees or former employ-
21 ees. See *Palmer v. Pioneer and Associates, Ltd.*, 59 P. 3d 1237 (2000); (Tr. 371). The Court ruled
22
23
24
25
26

1 that, as a result, Mr. Boynton was barred from testifying.⁶

2 99. At the conclusion of trial on January 23, 2003, the Court issued certain preliminary
3 rulings including finding that Milanian had acted in bad faith in asserting rights to COLOSSEUM
4 and EMPIRE. The Court also required additional briefs on the issues of whether the 1996 claims
5 were compulsory and, if not, whether there was sufficient evidence in this case to rule on the new
6 claim in Plaintiffs amended complaint for declaratory judgment as to the 1996 counterclaims. The
7 Court also requested a submission from the parties on attorneys' fees and damages.

8 CONCLUSIONS OF LAW

10 1. This Court has subject matter jurisdiction over this action pursuant to 15 U.S.C. §
11 1121(a) and 28 U.S.C. §§ 1331, 1338(a), 1367 and 2201.

13 2. This Court has personal jurisdiction over the defendants, and venue is proper
14 pursuant to 28 U.S.C. § 1391.

15 3. The Court has authority under Federal Rule of Civil Procedure 65 to conduct a final
16 trial on the merits consolidated with the Plaintiffs' request for preliminary relief.

17 **I. Count One: Declaratory Judgment on THE COLOSSEUM Trademark.**

18 4. The Declaratory Judgment Act provides:

19 [i]n a case of actual controversy within its jurisdiction . . . any court of the United
20 States, upon the filing of an appropriate pleading, may declare the rights and other
21 legal relations of any interest party seeking such declaration, whether or not further
22 relief is or could be sought. 28 U.S.C. § 2201 (1988).

23 ⁶ Even if Mr. Boynton had not been barred from testifying as a result of the *ex parte* contact, he would still
24 not have testified since he could only appear by telephone, and the Court ruled that it would not accept his
25 testimony in this fashion. Furthermore there was no prejudice to Defendants by this ruling for another
26 reason. Based on Mr. Santucci's representation that Mr. Boynton has no recollection of any events, his
testimony could have had no impact on any issue before this Court but could have merely allowed
defendants to authenticate the 1996 documents in Mr. Buhyoff's affidavit. Plaintiffs stipulated to their
admission, thus removing any possible prejudice.

1 5. In order to obtain declaratory relief, a plaintiff must establish that there is an actual
2 controversy present that is ripe for adjudication. *Chiron Corp. v. Advanced Chemtech, Inc.*, 869 F.
3 Supp. 800, 801 (N.D. Cal. 1994) (citing *Shell Oil Co. v. Amoco Corp.*, 970 F.2d 885, 887 (Fed.
4 Cir. 1992)). In making its determination, a court must consider “whether the facts alleged, under
5 all the circumstances, show that there is a substantial controversy, between the parties having
6 adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory
7 judgment.” *Central Montana Elec. Power Co-op., Inc. v. Administrator of Bonneville Power*
8 *Admin.*, 840 F.2d 1472, 1474 (9th Cir. 1988) (citation omitted). In an infringement context, a
9 plaintiff can meet this burden by showing it has a reasonable apprehension of being sued. *Id.*; see
10 also *Arrowhead Indus. Water, Inc. v. Ecolochem, Inc.*, 846 F.2d 731, 736 (Fed. Cir. 1988); *Topp-*
11 *Cola Co. v. Coca Cola Co.*, 314 F.2d 124 (2d Cir. 1963).

14 6. In this case, Milanian’s conduct clearly caused Plaintiffs to have a reasonable
15 apprehension of being sued. The Court concludes that Milanian knew of Plaintiffs’ press release
16 with respect to the building of THE COLOSSEUM and filed his applications in order to capitalize
17 on the Plaintiffs’ failure to have a federal registration for that mark. The timing of his June 1,
18 2002 call to PPE’s headquarters and his refusal to respond to Plaintiffs’ request that Milanian
19 abandon his claim of rights in THE COLOSSEUM leads the Court to conclude that Milanian
20 intended to wait until the eve of The Colosseum’s opening to file an action against Plaintiffs.
21 Certainly, the September 24, 2002 letter from the law firm of Brinks Hoffer to Plaintiffs’ outside
22 counsel requesting support for PPE’s claims of priority signifies that Milanian continued to believe
23 that he had claims of infringement.
24
25

26

1 7. In order to adjudicate this claim for relief, the Court will first consider whether
2 Milanian had any basis to claim a superior right to THE COLOSSEUM mark. The evidence
3 indicates that Milanian relied primarily on the fact that he had filed three intent to use applications
4 before Plaintiffs and that therefore he had priority.

5
6 8. Milanian's reliance on his intent-to-use applications is completely misplaced.
7 Section 1(b) of the Lanham Act was amended by Trademark Law Revision Act of 1988 (the
8 "TLRA"), effective November 16, 1989, to allow for the filing of a trademark application by an
9 individual with "a bona fide intention, under the circumstances showing the good faith of such
10 person" to use the mark on the goods or services listed. The U.S. Trademark Association's official
11 commentary to the TLRA observed that although the Act contains no precise definition of bona
12 fide intent to use, a requirement of "good faith" is a precondition to such registration. *See*
13 U.S.T.A., *"The Trademark Law Rev. Act of 1988,"* comment on § 1(b) at p. 43 (1989).

14
15 9. There is little case law with respect to what constitutes bona fide intent to use a
16 mark in commerce. However, in order to prevent the intent to use amendments from being abused,
17 the Lanham Act was also amended to clarify that "use in commerce" means "the bona fide use of
18 the mark in the ordinary course of trade, and not made merely to reserve a right in a mark." 15
19 U.S.C. § 1127.

20
21 10. Based on the legislative history behind the TLRA, the test of "bona fide" intent has
22 been interpreted to require "objective" evidence of circumstances showing "good faith." *See Lane*
23 *Ltd. v. Jackson Int'l Trading Co.*, 33 U.S.P.Q.2d 1351, 1355 (T.T.A.B. 1994) ("[A]pplicant's mere
24 statement of subjective intention, without more, would be insufficient to establish applicant's bona
25 fide intention to use the mark in commerce.") As one commentator noted, "[t]his intention must
26

1 be more than a 'wish list'". W. Bouchard, How to Get and Keep a Trademark, *Trademarks and*
2 *the Arts* (2nd Ed. 2000) reprinted in J. Ginsburg, *Trademark and Unfair Competition Law* 215 (3d
3 Ed. 2001).

4
5 11. The legislative history to these amendments provide significant guidance to this
6 Court in evaluating whether Milanian had a bona fide intent to use THE COLOSSEUM and
7 EMPIRE marks in commerce at the time he filed those applications. *See generally*
8 S.Jud.Comm.Rep. on S. 1883, S. REP. NO. 100-515, pp. 23, 24 (Sept. 15, 1988); *reprinted in*
9 TLRA Leg. Hist., *supra*, 23, 24. Indeed, among the examples provided of evidence that would
10 disprove a bona fide intent to use a mark, the Senate Report included the following two which are
11 particularly relevant to the facts of this case:

12
13 numerous intent to use applications for a variety of desirable trade-
14 marks intended to be used on [a] single new product . . . [and] an
15 excessive number of intent-to-use applications in relation to the
16 number of products the applicant is likely to introduce under the
17 applied-for marks during the pendency of the applications."

18 *Id.*

19 12. Milanian points to the fact that he has obtained several business method patents
20 relating to a Titanic-themed casino as evidence that he had a good faith intent to use these marks in
21 commerce.

22 13. While under other circumstances the holding of a patent might constitute evidence
23 of a bona fide intent to use a mark related to the patent in commerce, this case is not the usual
24 case. As noted above in the Court's Findings of Fact, Milanian deliberately misrepresented the
25 nature of the services he intended to offer in connection with his applications for consulting
26 services. As is evident from the various websites Milanian has submitted to the USPTO to

1 substantiate his use of his marks, Milanian was trafficking in trademarks, i.e. reserving what he
2 perceived to be desirable names with the intent to sell or license them to others. The patent filings
3 in this case actually further support this conclusion, for they show that Milanian was, as his
4 counsel admitted by virtue of his questioning of Plaintiff's in-house counsel, filing his intent to use
5 trademark applications to further protect the business ideas embodied in those patents.
6

7 14. The Court also concludes that this business model of registering numerous
8 trademarks to assign them to others is not the normal business model used by consultants in the
9 hotel and gaming industries. Indeed, the Court finds the Dun & Bradstreet report as evidence that
10 as of May 2002 Milanian made no mention of his casino, hotel and related consulting services. In
11 light of the revisions made in the TLRA to the definition of the term "use in commerce," it is clear
12 that Milanian's intended "use" was not in accordance with the ordinary course of trade but was
13 nothing more than a pretext for his effort to reserve rights in a series of names.
14

15 15. The statement on Milanian's web site that he was offering "licensing rights and
16 buyout rights in the trademark service mark for resort hotel services, casino services and/or
17 product merchandising services" makes clear that there is no other explanation for why Milanian,
18 who otherwise has no involvement with the hotel casino industry, has invested in over 150
19 trademarks.
20

21 16. The Court therefore finds that Milanian's intent to use applications for COLOS-
22 SEUM and EMPIRE were not made with a bona fide intent to use and are void. They confer
23 absolutely no priority on Milanian, or any person or entity claiming from, through or under him.
24

25 17. However, even assuming that Milanian's applications were not void *ab initio*, there
26 are other reasons why the Court will order Judgment in Plaintiffs' favor on the first cause of

1 action.

2 18. Surprisingly, notwithstanding that Milanian contacted Plaintiffs and threatened
3 legal action based on their adoption of THE COLOSSEUM mark, Milanian's position at trial was
4 that Plaintiffs were using the mark in a generic fashion. If true, then there was obviously no basis
5 for Milanian to object to such use.
6

7 19. However, as discussed below, the Court specifically finds that Plaintiffs' use of
8 COLOSSEUM was not generic. The Court notes that CWI clearly commenced use of THE
9 COLOSSEUM mark years before Milanian could possibly claim any use. Thus, even if
10 Milanian's intent to use applications were not void, he could still not use whatever rights he might
11 obtain to stop a senior user who predated his application filing date. *See Johnny Blastoff, Inc. v.*
12 *L.A. Rams Football Co.*, 188 F.3d 427, 435 (7th Cir. 1999) (quoting 3 McCarthy, *Trademarks and*
13 *Unfair Competition* § 19:2) (citation omitted) (hereinafter "McCarthy").
14

15 20. For all these reasons, the Court finds that Plaintiffs are entitled to judgment on their
16 first cause of action.
17

18 **II. Plaintiffs' Second, Third, Fourth and Fifth Causes of Action: Milanian's Infringe**
19 **ment of their COLOSSEUM and EMPIRE Marks.**

20 21. The Second and Third Causes of Action both claim trademark infringement by
21 Milanian of Plaintiffs' COLOSSEUM trademark under the Lanham Act and Nevada common law,
22 respectively. The Fourth and Fifth Causes of Action allege, respectively, Lanham Act and Nevada
23 common law trademark infringement with respect to Plaintiffs' rights in its EMPIRE Family of
24 Marks.
25

26

1 22. The elements necessary to make out a claim of Nevada common law trademark
2 infringement are identical to the elements necessary under section 43(a) of the Lanham Act, 15
3 U.S.C. s 1125(a). *General Motors Corp. v. Let's Make a Deal*, 223 F.Supp.2d 1183, 1188 (D.
4 Nev. 2002); *A.L.M.N. v. Rosoff*, 104 Nev. 274, 277, 751 P.2d 1519 (1988). The Court will thus
5 analyze these claims together.
6

7 23. The Lanham Act protects both registered and common-law trademarks. Section
8 43(a)(1) of the Act provides:

9 Any person who, on or in connection with any goods or services, ... uses in com-
10 merce any word, term, name, symbol, or device, or any combination thereof, or any
11 false designation of origin, false or misleading description of fact, or false or
12 misleading representation of fact, which ---

13 (A) is likely to cause confusion, or to cause mistake, or to deceive as to the affilia-
14 tion, connection, or association of such person with another person, or as to the
15 origin, sponsorship, or approval of his or her goods, services, or commercial
16 activities by another person, ... shall be liable in a civil action by any person who
17 believes that he or she is or is likely to be damaged by such act. *Id.* at 15 U.S.C. §
18 1125 (a)(1).

19 24. This section protects against infringement of unregistered marks, trade dress, as
20 well as registered marks. *Brookfield Communications, Inc. v. West Coast Entertainment Corp.*,
21 174 F.3d 1036, 1046 (9th Cir. 1999).

22 25. To make out a case of trademark infringement Plaintiffs must establish that the
23 defendant is using a mark that is (i) confusingly similar (ii) to a valid and protectable mark of the
24 plaintiff. *See Brookfield*, 174. F.3d at 1046.

25 26. As noted above, there is no question of priority in this case. Plaintiffs commenced
26 use of their COLOSSEUM and EMPIRE marks well before Milanian. Indeed, even had Milanian
been able to prove actual use of COLOSSEUM before CWI, he still would not have prevailed on

1 this element as to that mark. It is not disputed that Plaintiffs issued a press release announcing
2 what was to become known as THE COLOSSEUM AT CAESARS PALACE shortly before
3 Milanian filed his intent to use application.

4
5 27. Courts have consistently rejected claims by usurpers like Milanian who seek to use
6 technical arguments to deprive the natural trademark owner of its rights. For instance, in a case
7 that is factually analogous to the case at bar, the District Court of Maryland found that a plaintiff's
8 use of a mark during the pre-construction and promotional stages of development of a sports
9 stadium was sufficient to establish priority and confer trademark rights such that it could enjoin
10 the defendant from infringing its mark. *See Maryland Stadium Authority v. Becker*, 806 F. Supp.
11 1236, 25 U.S.P.Q.2d 1469 (D. Md. 1992). The Ninth Circuit has specifically instructed that in
12 evaluating priority over a service mark the district courts should look to the "totality of the
13 circumstances," including "non-sales" activities such as press releases. *Chance v. Pac-Tel*
14 *Teletrac, Inc.*, 242 F.3d 1151, 1159 (9th Cir. 2001). Applying the teaching of *Chance* to this case,
15 the Court finds that Plaintiffs' use in the April 2001 press release was before Milanian filed his
16 first intent to use application for COLOSSEUM and is sufficient to give Plaintiffs priority over
17 that application.
18
19

20 **A. Plaintiffs' Use Of THE COLOSSEUM Mark Is Not Generic.**

21 28. Milanian also attacks the validity of Plaintiffs' COLOSSEUM trademark and
22 claims that as used by Plaintiffs COLOSSEUM is generic. Milanian specifically points to the
23 American Heritage Dictionary definition for "coliseum" namely, "a large amphitheatre for public
24 sports, events, entertainment, assemblies."
25

26

1 29. Since COLOSSEUM is not a registered mark, the burden falls to Plaintiffs to prove
2 that the mark is not generic. *Filipino Yellow Pages, Inc. v. Asian Journal Publications, Inc.*, 198
3 F.3d 1143, 1146 (9th Cir. 1999).

4 30. The legal standard for determining whether a mark is generic is known as the
5 primary significance test. If the primary significance of a particular term is the product itself and
6 not the producer, then the term is generic. *See id.* at 1147. However, it is well established that the
7 analysis is not quite that simple. For instance in *Filipino*, the Ninth Circuit acknowledged that the
8 borderline between generic marks and the weakest of descriptive marks is “almost imperceptible.”
9 *See Id.* at 1151 n.5.

10 31. Furthermore, “a mark is not generic merely because it has some significance to the
11 public as an indication of the nature or class of an article. In order to become generic the principal
12 significance of the word must be its indication of the nature or class of an article, rather than an
13 indication of the its origin.” *King-Seeley Thermos C. v. Aladdin Indus., Inc.*, 321 F.2d 577, 580
14 (2d Cir. 1963) *cited in Genesee Brewing Co., Inc. v. Stroh Brewing Co.*, 124 F.3d 137, 144 (2d
15 Cir. 1997). Furthermore, occasional generic usage does not destroy a trademark. Indeed, often the
16 use of a trademark as a generic noun illustrates the power of a trademark. As McCarthy notes, the
17 consumer ordering “a hamburger and a Coke” is demonstrating brand loyalty, not genericness. 2
18 McCarthy §12.8 at 12-20.

19 32. The Court notes that a term may be generic for some goods and services and not
20 generic for other terms. *Soweco, Inc. v. Shell Oil Co*, 617 F.2d 1178, 1183 (5th Cir. 1980) and
21 *Abercrombie & Fitch Co. v. Hunting World, Inc.*, 537 F.2d 4,9 n.6 (2d Cir. 1976).

22

1 33. The evidence adduced at trial establishes that Plaintiffs used COLOSSEUM in
2 accordance with standard trademark usage. Thus, COLOSSEUM was inevitably used by CWI in
3 the same font and style as was used for other designations that clearly are perceived as trademarks.
4 For example, Exhibit 124 is a brochure from the late 1960s promoting the convention services of
5 Caesars Palace. The page titles feature many registered trademarks of CWI including CAESARS
6 PALACE, CLEOPATRA'S BARGE, THE PIAZZA, I, CAESAR and THE COLOSSEUM; each in the
7 identical font and type size. Thus, the Court finds that Plaintiffs treated COLOSSEUM no
8 differently from its other valuable trademarks and not just as the name of a building or room.
9

10 34. Additionally, the Court notes that the USPTO has conducted a preliminary review
11 of CWI's application to register COLOSSEUM as a trademark for "[e]duction and entertainment
12 services, namely operating a sports, entertainment, concert, convention and exhibition arena and
13 the production or co-production of sports, and entertainment events, concerts, conventions and
14 exhibitions for public exhibition, viewing and for radio, television and cable broadcasts, in
15 International Class 41." (Ex. 14). Significantly, the USPTO did not refuse registration on the
16 basis that the mark was generic, but found the mark to be descriptive. (Tr. 275-277, Ex. 14).
17

18 35. Courts should give deference to the opinion of the Examining Attorney. *See* 5
19 McCarthy, § 32:95.
20

21 36. Furthermore, Plaintiffs note that THE COLOSSEUM AT CAESARS PALACE is
22 not, strictly speaking, an amphitheatre. The American Heritage Dictionary defines this term as
23 "an oval or round structure having tiers of seats rising gradually outward from an open space or
24 arena at the *center*." (emphasis added). As Patrick Bergé noted, an amphitheatre is best under-
25 stood to describe a stadium like format where the crowd surrounds the field or stage as opposed to
26

1 a typical theatre where the stage is in front of and not in the center of the audience. (Tr. 397-398).
2 Testimony from an individual who is familiar with the marketplace usage of a designation or term
3 in question provides helpful evidence regarding the issue of genericness. See 2 McCarthy, §
4 12:13(5).
5

6 37. The use of the term COLOSSEUM to describe THE COLOSSEUM Convention
7 Center was clearly not descriptive as there was no elevated seating and the structure was square.
8 The same is true of the COLOSSEUM Showcase at Caesars Indiana. While THE COLOSSEUM
9 AT CAESARS PALACE is round and has elevated seating, the evidence shows that there are
10 significant differences between this structure and a true 'coliseum.'
11

12 38. Notwithstanding the dictionary definition, based on the testimony, it is clear that the
13 most common understanding of the term 'coliseum' today is to refer to a sports venue with seating
14 all the way around a central field. (Tr. 235, 397-398). A 'coliseum' has a large audience capacity
15 such as the Los Angeles Coliseum which seats 100,000 sports fans. (Tr. 235).
16

17 39. In contrast, THE COLOSSEUM AT CAESARS PALACE seats only 4,000. (Tr.
18 150-51). Furthermore, as specially designed by Bergé, the farthest seat from the stage, which is
19 not in the center of the building but at the front, is 120 feet. The St. Louis Rams might still be
20 playing at the Los Angeles Coliseum if this were typical of coliseum-like seating.

21 40. Of course, determining genericness requires the Court to examine the nature of the
22 services offered in connection with the mark. *Soweco, Inc.*, 617 F.2d at 1183. Milanian does not
23 contest this proposition and indeed argues that his intended use for The Colosseum for, *inter alia*,
24 gaming and product merchandising is not generic. (Tr. 514-520). Having found that Plaintiffs
25 have priority over Milanian, the Court concludes that Plaintiffs' use of THE COLOSSEUM mark
26

1 for those goods and services is not generic. The Court also finds that Plaintiffs' use of THE
2 COLOSSEUM for food, non-sports related entertainment, banquet and meeting services is not
3 generic, as there is no evidence that these services are associated with use of the word for a sports
4 arena.

5
6 41. Thus, Plaintiffs' use of THE COLOSSEUM to designate restaurant services at the
7 Cove Haven Caesars Pocono Resort, entertainment services at Caesars Indiana, or a variety of non-
8 sports related services at Caesars Palace are suggestive of the grandeur and excitement associated
9 with the ancient Roman Coliseum or sports events that occur in modern coliseums.

10 42. Even if COLOSSEUM as used by Plaintiffs is descriptive, the Court finds based on
11 CWI's extensive use of the mark for over 35 years, the fact that more than 11 million individuals
12 have utilized these services, and the large sums of money spent to promote this mark, that the
13 mark has secondary meaning.

14
15 43. Descriptive marks with secondary meaning are protectable trademarks. *See Self-*
16 *Realization Fellowship Church v. Ananda Church of Self-Realization*, 59 F.3d 902, 910 (9th Cir.
17 1995). Thus, whether the mark is suggestive or descriptive with secondary meaning, it is clear that
18 Plaintiffs have satisfied the first prong of the infringement test with respect to THE COLOSSEUM
19 mark.

20
21 44. Defendant does not contest the validity of Plaintiffs' EMPIRE Family of Marks.
22 The Court finds that CWI has used its EMPIRE Family of Marks dating back to at least 1968 in
23 connection with a wide array of services including hotel, restaurant, entertainment, and gaming.

24
25 45. Thus, Plaintiffs have satisfied the first prong of the infringement test for its
26 EMPIRE Family of Marks.

1 **B. Milanian's Infringement Of Plaintiffs' Marks**

2 46. Having determined that Plaintiffs own THE COLOSSEUM and EMPIRE marks
3 and that the marks are valid, the next step is to determine whether the similarity of the marks is
4 likely to confuse the public as to the source of the products or services. *See Sharky's Inc. v.*
5 *Covalt*, 704 F.2d 426, 431 (9th Cir. 1983); *Riggs Marketing, Inc. v. Mitchell*, 993 F. Supp. 1301,
6 1309 (D. Nev. 1997).

7 47. In *AMF Inc. v. Sleekcraft Boats*, 599 F.2d 341 (9th Cir. 1979), the Ninth Circuit set
8 forth the following factors, commonly referred to as "the *Sleekcraft* Factors," to determine whether
9 there is a likelihood of confusion.
10

- 11 (1) similarity of the marks;
12 (2) proximity or relatedness of services;
13 (3) strength of the mark;
14 (4) evidence of actual confusion;
15 (5) marketing channels used;
16 (6) type of goods and degree of care likely to be exercised by
17 the purchaser;
18 (7) defendant's intent in selecting the mark;
19 (8) likelihood of expansion of the product line.

20 *Id.* at 348.

21 48. Application of these factors is case-specific, however similarity of the marks and
22 whether the two users compete in the same industry are always important. *Brookfield*, 174 F.3d at
23 1054.

24 **Factor 1: Similarity of the Marks**

25 49. In determining the similarity of marks, a court must examine the marks in their
26 entirety as they appear in the marketplace along with the relevant appearance, sound and meaning.
 See Dreamwerks Prod. Group, Inc. v. SKG Studio, 142 F.3d 1127, 1129 (9th Cir. 1998). Simply

1 put, "the 'combination of features as a whole rather than a difference in some of the details ... must
2 determine whether the competing product is likely to cause confusion in the minds of the public."
3 *Perfect Fit Industries, Inc. v. Acme Quilting Co.*, 618 F.2d 950, 954 (2d Cir. 1980) (citations
4 omitted). Here, the respective COLOSSEUM marks are obviously identical or differ only by
5 virtue of the word "the" or "Caesars Palace". In addition, Defendants' claim to ROME LAS
6 VEGAS COLOSSEUM is also virtually identical to COLOSSEUM, given that CWI has used THE
7 COLOSSEUM AT CAESARS PALACE in Las Vegas as part of its well-known Roman-Grecian theme.
8

9 50. Absolute identity between the marks, however, is not necessary for a finding of
10 consumer confusion. See *Washington Speakers Bureau Inc. v. Leading Authorities, Inc.*, 33 F.
11 Supp. 2d 488, 497 (E.D. Va. 1999). Confusing similarity of marks may also be established under
12 the "Family of Marks" doctrine. A trademark owner may use a number of marks with a common
13 feature or "surname" that is distinctive enough to be recognized by the consuming public causing
14 them to associate such derivative marks with the trademark owner. See *Spraying Systems Co. v.*
15 *Delavan, Inc.*, 975 F.2d 387, 395 (7th Cir. 1992) ("[A]pplication of the doctrine requires a showing
16 that the family feature or 'surname' is distinctive enough to trigger recognition 'in an of itself'")
17 (citation omitted). "A family of marks is a group of marks having a recognizable common
18 characteristic, wherein the marks are comprised and used in such a way that the consuming public
19 associates not only the individual marks, but the common characteristic of the family, with the
20 trademark owner." *J & J Snack Foods Corp. v. McDonald's Corp.*, 932 F.2d 1460, 1462 (Fed.
21 Cir. 1991)
22
23
24

25 51. For example, MC and MAC are a well-known family of marks associated with the
26 fast food chain McDonalds's Corp. See *McDonald's Corp. v. McBagel's, Inc.*, 649 F. Supp. 1268,

1 U.S.P.Q.2d 1761 (S.D.N.Y. 1986) ("MC" family of mark was found to be infringed by the use of McBagel's on a bagel bakery and restaurant). A "Family of Marks" will be found upon a showing that the designation constituting the common feature or "surname" of the family is in fact recognized by the public as a trademark in and of itself. *Primedia Intertec Corp. v. Technology Marketing Corp.*, 35 F. Supp.2d 809, 817 (D. Kan. 1998).

52. Plaintiffs have established their rights to a family of EMPIRE marks including: EMPIRE, THE JEWEL OF THE EMPIRE, CAESARS MOUNTAIN EMPIRE, THE GLORY OF THE EMPIRE, ONWARD TO THE EMPIRE, THE ROMAN EMPIRE, GUIDE TO THE EMPIRE, ENCHANTMENT AT THE EMPIRE, ENJOY THE EMPIRE, BEHOLD THE EMPIRE, CAESARS MAGICAL EMPIRE, REBUILDING THE EMPIRE, EXPANDING THE EMPIRE, and others including, EMPERORS CLUB, and the EMPERORS EVERYDAY GIVEAWAY. Milanian's THE EMPIRE and THE ROMAN EMPIRE bear similarity to CWI's family of EMPIRE marks in that the ordinary consumer is likely to conclude that the goods and services offered under the marks originate from, or are performed by, Plaintiffs.

53. Thus, this factor weighs strongly in Plaintiffs' favor for both marks.

Factor 2: Relatedness of the Services

54. The next step is to consider the relatedness of the services. The more related the services, the greater the danger that the public will incorrectly assume that there is a connection between the producers, despite the fact that no relationship exists. *See Sleekcraft*, 599 F.2d at 350 (citation omitted). "Complimentary products or services are particularly vulnerable to confusion." *Sleekcraft*, 599 F.2d at 350 (citing *Communications Satellite Corp. v. Comcet, Inc.*, 429 F.2d 1245, 1253 (4th Cir. 1970)).

1 55. Milanian argues that his consulting services are not related to the services offered
2 by Plaintiffs. The Court disagrees.

3 56. First, Milanian's claim, first made on June 1, 2002, that Plaintiffs were infringing
4 his rights undercuts his argument that his services are unrelated to those offered by Plaintiffs.

5 57. Second, Milanian's application to register JULIUS CAESAR for consulting
6 services relating to hotels and casinos was refused registration based on the prior registration for
7 CAESARS by CWI for hotel and casino services. (Tr. 289). Thus, the Examining Attorney found
8 sufficient relatedness to refuse registration even when the marks were not so close as here (Caesars
9 vs. Julius Caesars in contrast to The Colosseum vs. Colosseum).

10 58. Third, as previously discussed, Milanian claimed consulting services for hotels and
11 casinos as a first step in assigning these marks to a hotel or casino for their use on their services.
12 Thus, he saw them as sufficiently related to allow him to assign the marks as part of his "project
13 package."

14 59. Finally, as did the T.T.A.B. in the *Cunard* case, the Court notes that even if it is
15 true that consultants market their services to different end-users than do hotels and casinos, a
16 consultant's specialized audience is still part of the general public susceptible to source confusion.
17 *Cunard, supra*, at 16.

18 60. Under these circumstances, this factor leans in Plaintiffs' favor.

19
20
21 **Factor 3: Strength of the Mark**

22 61. It is well settled that the strength of a mark refers to "the distinctiveness, or more
23 precisely, its tendency to identify the goods sold under the mark as emanating from a particular,
24 although possibly anonymous source." *E.I. DuPont de Nemours & Co. v. Yoshida Intern., Inc.*,
25
26

1 393 F. Supp. 502, 512 (E.D.N.Y. 1975). In determining the distinctiveness of a mark, courts
2 consider two factors: "its inherent distinctiveness, and its distinctiveness in the marketplace."
3 *Streetwise Maps, Inc. v. Vandam, Inc.*, 159 F.3d 739, 743-44 (2d Cir. 1998). "Marks are often
4 classified in one of five categories of increasing distinctiveness: (1) generic, (2) descriptive, (3)
5 suggestive, (4) arbitrary, or (5) fanciful." *Kendall-Jackson Winery, Ltd. v. E. & J. Gallo Winery*,
6 150 F.3d 1042, 1047 (9th Cir. 1998). Marks that are inherently distinctive such as arbitrary,
7 fanciful or suggestive marks do not require proof of secondary meaning in order to be protected.
8 *See Two Pesos, Inc. Taco Cabana, Inc.*, 505 U.S. 763, 768 (1992). A descriptive mark, however,
9 can become protectable "provided that it has acquired 'secondary meaning' in the minds of
10 consumers, i.e., it has become distinctive of the trademark applicant's goods in commerce."
11 *Filipino*, 198 F.3d at 1147.
12

13
14 62. Arbitrary and fanciful marks are strong marks, and are afforded greater protection.
15 *See Brookfield*, 174 F.3d at 1058. Fanciful marks are "coined" terms that are invented or selected
16 for the sole purpose of functioning as a trademark. *Blisscraft of Hollywood v. United Plastics Co.*,
17 294 F.2d 694, 700 (2d Cir. 1961). Arbitrary marks are words commonly used in the English
18 language, but when used with the goods or services in issue, neither suggest nor describe any
19 ingredient, quality or characteristic of those goods or services. *Tisch Hotels, Inc. v. Americana*
20 *Inn, Inc.*, 350 F.2d 609, 611 (7th Cir. 1965).
21

22 63. A "suggestive" term suggests rather than describes an ingredient, quality, or
23 characteristic of the goods and requires imagination, thought, and perception to determine the
24 nature of the goods, while "descriptive" term specifically describes a characteristic or ingredient of
25 an article or service. *Abercrombie & Fitch*, 537 F.2d at 10-11. For example, ACTION SLACKS
26

1 was found to be merely suggestive for pants. *See Levi Strauss & Co. v. R. Josephs Sportswear*, 28
2 U.S.P.Q.2d 1464 (T.T.A.B. 1993). Similarly, the mark CITIBANK for an urban bank was found
3 to be suggestive, not requiring proof of a secondary meaning. *See Citibank, N.A. v. Citibank*
4 *Group, Inc.*, 724 F.2d 1540 (11th Cir. 1984).

6 64. The Court has already determined that Plaintiffs' COLOSSEUM mark is suggestive
7 and that, even if only descriptive, there is sufficient evidence of secondary meaning to make it
8 protectable.

9 65. CWI's EMPIRE Family of Marks is fanciful. The word EMPIRE used in connec-
10 tion with hotel, casino, gaming, and entertainment services bears no relationship to these services.
11 Moreover, the court finds that the EMPIRE mark been used continuously for over 35 years on a
12 variety of promotional materials in connection with CWI's services.

14 66. Based on the large number of consumers exposed to these marks and the continu-
15 ous use of these marks in countless promotional pieces on a regular basis, the Court concludes that
16 both marks are strong.

18 67. This factor goes in Plaintiffs' column.

19 **Factor 4: Actual Confusion**

20 68. In the Ninth Circuit, evidence of actual confusion is not required to establish a
21 violation of the Lanham Act. *See Academy of Motion Picture Arts & Sciences v. Creative House*
22 *Promotions, Inc.*, 944 F.2d 1446, 1457 (9th Cir. 1991). In fact, such a showing where there has
23 been insignificant commercial activity by the infringer would work to penalize the trademark
24 owner for taking prompt steps to protect his/her rights. *See Lois Sportswear, U.S.A., Inc. v. Levi*
25 *Strauss & Co.*, 799 F.2d 867, 873 (2d Cir. 1986).

1 69. Milanian's only known use of THE COLOSSEUM and EMPIRE marks is the
2 display of these marks on his web site. Although offered in conjunction with his consulting
3 services, there is no evidence that he has been hired to provide such services to anyone in the
4 casino industry. Consequently, the Court does not find it surprising that there is no evidence of
5 actual confusion.
6

7 70. This factor is therefore neutral.

8 **Factor 5: Marketing Channels**

9 71. Plaintiffs' use of a variety of methods to promote their COLOSSEUM and
10 EMPIRE Family of Marks including the Internet. Over one million "unique" individuals have
11 visited the Caesars web site since it began to promote the Celine Dion show at THE COLOS-
12 SEUM entertainment center, making prominent use of both THE COLOSSEUM mark and
13 EMPIRE Family of Marks.
14

15 72. Milanian, as discussed above, promotes his claims to ownership of these registra-
16 tions and pending applications on the Internet. Thus, the Court concludes that there is overlap in
17 the channels of trade used by the parties. This factor also weighs in favor of Plaintiffs.
18

19 **Factor 6: Wrongful Intent**

20 73. A plaintiff need not prove wrongful intent to show trademark infringement.
21 *Brookfield*, 174 F.3d at 1059. However, where it is shown that the alleged infringer knowingly
22 adopted the infringing mark, courts will presume that it can achieve its purpose in deceiving the
23 public. *Sleekcraft*, 599 F.2d at 354.
24

25 74. The Court has already concluded that Milanian had knowledge of Plaintiffs'
26 announcement to build a new entertainment complex to be called THE COLOSSEUM when he

1 filed his first intent to use application for COLOSSEUM. The Court finds the filing of this
2 application to have been done in bad faith in an attempt to cast a cloud over Plaintiffs' rights to use
3 the mark for the new convention center. The Court also finds that Milanian was aware of the
4 Plaintiffs' EMPIRE Family of Marks and that his filing for these marks were also done in order to
5 obtain leverage over Plaintiffs for the purposes of extracting monies from them.
6

7 75. Additionally, as previously noted, the Court finds that Milanian did not have a bona
8 fide intent to use the contested marks when he filed his intent to use applications.

9 76. This course of conduct directly supports a conclusion that Milanian's efforts to
10 acquire rights in COLOSSEUM and EMPIRE was done in bad faith.
11

12 **Factor 7: Product Expansion**

13 77. Based on Milanian's obvious interest in successfully entering the world of gaming
14 and hotels, it is self-evident that he hopes to expand his services from consulting to actual hotel
15 and casino services. Thus, this factor, too, weighs in favor of Plaintiffs.

16 78. Based on a consideration of the *Sleekcraft* factors, the Court finds the identity (or
17 near identity) of the trademarks, the relatedness of the businesses, the relative strength of Plain-
18 tiffs' mark, the overlap between the respective marketing channels used by the parties, Milanian's
19 bad faith, and the likelihood of expansion that Milanian's use of THE COLOSSEUM and
20 EMPIRE marks on the Internet are likely to cause confusion. The Court also finds that Milanian's
21 own assertion in June of 2002 that there would be confusion further shows a likelihood of
22 confusion.
23

24 79. The Court also notes that its conclusion that Milanian's use of the Plaintiffs' marks
25 creates a likelihood of confusion in the market place is supported by the doctrine of initial interest
26

1 confusion. See *Interstellar Starship Services, Ltd. v. Epix Inc.*, 184 F.3d 1107, 1110 (9th Cir.
2 1999). Initial interest confusion results when the defendant uses the plaintiff's trademark "in a
3 manner calculated 'to capture initial consumer attention, even though no actual sale is finally
4 completed as a result of the confusion.'" *Brookfield*, 174 F.3d at 1062 (quoting *Dr. Seuss Enters.*
5 *v. Penguin Books*, 109 F.3d 1394, 1405 (9th Cir. 1997)).
6

7 80. No one could reasonably deny that a computer consulting firm calling itself
8 "APPLE" would benefit from the initial positive reach of potential customers. Similarly, a
9 consultant to the hotel and casino industry is going to gain an initial advantage by associating him
10 with one of the strongest brands in the gaming industry.
11

12 81. Based on these findings, the Court grants judgment to Plaintiffs on Counts Two,
13 Three, Four, and Five of their Amended Complaint.

14 III. The Compulsory Counterclaim Issue.

15 82. As noted above, Plaintiffs requested the Court rule that Milanian waived any claims
16 relating to developing the concept of The Colosseum as a result of his not bringing them as
17 compulsory counterclaims. Specifically, Plaintiffs requested that potential claims relating to the
18 1996 documents be barred as compulsory counterclaims.
19

20 83. Under the Federal Rules of Civil Procedure, pleadings "shall state as a counterclaim
21 any claim which at the time of serving the pleading the pleader has against any opposing party, if it
22 arises out of the transaction or occurrence that is the subject matter of the opposing party's claim
23 and does not require for its adjudication the presence of third parties of whom the court cannot
24 acquire jurisdiction." *Fed. R. Civ. P.* 13(a).
25

26

1 84. The rule is liberally applied and “was designed to prevent multiplicity of actions
2 and to achieve resolution in a single lawsuit of all disputes arising out of common matters.”
3 *Southern Constr. Co. v. Pickard*, 371 U.S. 57, 60 (1962). A subsequent action cannot be
4 maintained where the claims asserted should have been brought as compulsory counterclaims in a
5 previous action. *See Springs v. First Nat’l Bank*, 835 F.2d 1293, 1296 (9th Cir. 1988); *see also* 6
6 *Wright, Miller & Kane* § 1417, p. 129 (1990).

7
8 85. The Ninth Circuit utilizes the “logical relationship test” to determine whether two
9 claims arise out of the same “transaction or occurrence.” *See Pochiro v. Prudential Ins. Co. of*
10 *America*, 827 F.2d 1246, 1249 (9th Cir. 1987). Under the test, a counterclaim is compulsory of
11 there is any “logical relationship” between the claim and the counterclaim. *Id.*

12
13 86. It is not necessary for the facts or the legal theories to be the same or even substan-
14 tially the same in both actions. As long as the facts of the later asserted claim “are sufficiently
15 related to subject matter of the original action, they must be barred as compulsory claims.”
16 *Pochiro*, F.2d at 1251. If a separate trial on each of the respective claims would involve a
17 substantial duplication of time and effort by the parties and the court, a logical relationship will be
18 found. *See Pickard*, 371 U.S. at 60; *see also USM Corp. v. SPS Technologies, Inc.*, 102 F.R.D.
19 167, 171 (N.D. Ill. 1984).

20
21 87. Here, the Court finds that any claim arising out of or related to the events of 1996
22 were compulsory counterclaims. The subject matter of the action was the ability of Plaintiffs to
23 open The Colosseum without threats of legal action from Milanian. In addition, Milanian listed
24 the 1996 document as trial exhibits and former CWI employees related to the 1996 documents as
25 trial witnesses.
26

1 88. The Court also finds that a claim by Milanian in another case that he "owns" the
2 idea to develop a replica of the Roman Coliseum or that PPE and CWI violated some duty to him
3 in developing the concept would necessarily duplicate the testimony in this case from Deborah
4 Munch, Donald Chandler, and Patrick Bergé on the development of The Colosseum. Defendants
5 did not object to that testimony; indeed, they cross-examined those witnesses on those issues, and
6 also presented evidence about the issues on their case in-chief.
7

8 89. Thus, there would be substantial factual overlap between this case and a suit by
9 Milanian relating to The Colosseum.
10

11 90. The compulsory counterclaim rule requires only that the legal theories in the claims
12 and the counterclaims be related. *See Alltrade, Inc. v. Uniweld Products, Inc.*, 946 F.2d 622, 625
13 (9th Cir. 1991). Here, the May 1996 document submitted by Milanian indicated that he was
14 containing trademark rights in connection with his proposal to build a replica of the ancient
15 Roman Coliseum. Moreover, the 1996 documents were obviously relevant to several other
16 defenses such as unclean hands and related to the theory that Milanian's rights in "intellectual
17 property" were infringed by Plaintiffs. Indeed, Milanian recognized the relevance of these facts to
18 this case when he included in his answer to the complaint affirmative defenses based on estoppel
19 and that he had contractual rights to the trademarks.
20

21 91. The close factual and legal connection between claims based on the 1996 events
22 and the subject matter of this cases means that such claims should have been asserted as compul-
23 sory counterclaims. *See, e.g., Alltrade*, 946 F.2d at 625; *Official Airline Guides, Inc. v. Church-*
24 *field Publications, Inc.*, 756 F. Supp. 1393, 1407 (D. Or. 1990).
25

26

1 92. Milanian's failure to assert claims related to the 1996 events as compulsory
2 counterclaims in this action means that he has waived them. *See Pinkstaff*, 974 F.3d at 115-116;
3 *Pochiro*, 827 F.2d at 1251; *Springs v. First National Bank of Cut Bank*, 835 F.2d 1293, 1295 (9th
4 Cir. 1988); *see also* 6 Wright, Miller & Kane §1417 at 129.

5
6 93. This Court has the discretion to enjoin a party from bringing its compulsory
7 counterclaim in a subsequent federal [state or foreign] court action. *See Seattle Totems Hockey*
8 *Club, Inc. v. National Hockey League*, 652 F.2d 852, 854-855 (9th Cir. 1981), *cert. denied*, 457
9 U.S. 1105 (1982). That will be the remedy ordered in this case.

10 94. Plaintiffs are scheduled to open The Colosseum and introduce Celine Dion in late
11 March 2003. Given their substantial investment and Milanian's conduct in both creating the
12 dispute and in conducting this litigation, an injunction is appropriate to preclude the possibility of
13 Milanian filing another lawsuit around the time The Colosseum is scheduled to open.

14
15 **IV. Plaintiffs' Sixth Count For Declaratory Relief Against Milanian.**

 95. The Court's finding that Milanian, or any person or entity claiming from, through
18 or under him, waived his right to assert counterclaims relating to the 1996 events means that it
19 need not consider Plaintiffs' amendment of the Complaint to add a declaratory judgment count
20 (Count Six). Nevertheless, the Court finds, for the reasons set forth below, that judgment should
21 be awarded to Plaintiffs on such a claim.

22 96. There is a clear, concrete controversy between Plaintiffs and Milanian regarding
23 Milanian's alleged contractual and common law rights in the concept of building a replica of the
24 ancient Roman Coliseum. The nature of the 1996 documents and Milanian's refusal to provide a
25 general release as the sole basis for the rejecting a settlement on the eve of trial establish the
26

1 existence of such a controversy. In addition, Milanian's counsel consented to an amendment
2 during the first day of trial (Tr. 22), indicating that Milanian and his counsel were on notice of the
3 amended claims. *See S.E.C. v. Seaboard Corp.*, 677 F.2d 1301, 1314 (9th Cir. 1982) (basic inquiry
4 under Rule 15 is whether opposing party is on notice of the amended claim).

5
6 97. Moreover, Milanian conducted the trial as though the 1996 events were part of it,
7 and his failure to object to the evidence about the 1996 events also shows that he has consented to
8 try those issues in this case. *See Fed. R. Civ. P. 15(b)*; *Casey v. Lewis*, 43 F.3d 1261, 1268 (9th Cir.
9 1994), *rev'd on other grounds*, 518 U.S. 343 (1996); *see generally* 3 *Moore's Federal Practice* at
10 §15.18[1].

11
12 98. Plaintiffs seek a declaration that they breached no duty, in contract or tort, to
13 Milanian in connection with developing the concept of The Colosseum. As a declaratory
14 judgment defendant, Milanian bears the burden of proof to show that a contractual or common law
15 duty was owed to him by Plaintiffs, and that they breached such a duty. *See Vivid Techs. Inc. v.*
16 *Am. Science & Eng'g, Inc.*, 200 F.3d 795, 802 (Fed. Cir. 1999) (citing 12 *Moore's Federal*
17 *Practice* §57.62[2][d] (3rd ed. 1997)).

18
19 99. To establish a valid contract under Nevada law, Milanian would have to show an
20 offer, acceptance, and bargained-for consideration. *See D'Angelo v. Gardner*, 107 Nev. 704, 744,
21 819 P.2d 206, 233 (1991). Milanian has failed to establish that a valid contract existed between
22 him and CWI. Despite providing copies of the 1996 documents, Milanian did not move the
23 documents into evidence.

24
25 100. Even considering the August 1996 David Mitchell Certification as establishing a
26 contractual relationship, in which CWI agreed not to use such information without Milanian's

1 consent, the Court finds that there was no evidence that either plaintiff breached the contract.

2 101. Milanian failed to elicit any evidence that demonstrates that CWI used any of the
3 information in his proposal in the conception, design, and building The Colosseum. Indeed, the
4 undisputed evidence demonstrated that Plaintiffs developed the idea of building a new showroom
5 in early 2000, engaged Sceno Plus in May 2000 to develop designs for a new showroom, and that
6 Sceno Plus came up with the idea of a showroom that would resemble the ancient Roman
7 Colosseum and proposed that it be called "Coliseum."
8

102. Accordingly, the Court finds that Plaintiffs breached no contractual duty to
10 Milanian, or any person or entity claiming from, through or under defendant Milanian, in
11 connection with The Colosseum.
12

13 103. The Court reaches a similar conclusion with respect to a claim by Milanian in tort
14 that Plaintiffs misappropriated his trade secrets or otherwise converted his intellectual property.

15 104. A claim for trade secret misappropriation includes: (1) a valuable trade secret; (2)
16 misappropriation of the trade secret through use, disclosure, or nondisclosure of use of the trade
17 secret; and (3) the requirement that the misappropriation be wrongful because it was made in
18 breach of an express or implied contract or by a party with a duty not to disclose. *Frantz v.*
19 *Johnson*, 116 Nev. 455, 466, 999 P.2d 351, 358 (2000).
20

21 105. Conversion under Nevada law requires proof of an act of dominion wrongfully
22 exerted over another's personal property in denial of, or inconsistent with, his rights in that
23 property. *Evans v. Dean Witter Reynolds, Inc.*, 116 Nev. 598, 606, 5 P.3d 1043, 1048 (2000).
24

25

26

1 106. A trade secret is defined as:

2 ... information, including, without limitations, a formula, pattern, compilation,
3 program, device, method, technique, product, system, process, design, prototype,
4 procedure, computer programming instruction or code that:

5 (a) Derives independent economic value, actual or potential, from not being
6 generally known to, and not being readily ascertainable by proper means by the
7 public or any other persons who can obtain commercial or economic value
8 from its disclosure or use; and (b) Is the subject of efforts that are reasonable
9 under the circumstances to maintain its secrecy. Nev. Rev. Stat. 600A.030(5).

10 107. Milanian did not establish that the idea of building a replica of the ancient Roman
11 Coliseum at a property already employing an elaborate Roman theme constitutes a trade secret.
12 The evidence concerning the use of a Roman theme at Caesars Palace shows that this concept is
13 “readily ascertainable by proper means by ...persons [i.e. CWI] who can obtain commercial or
14 economic value from its ... use” and thus is not a trade secret under Nevada law. *See id.*

15 108. Although courts recognize a proprietary interest in ideas that are not trade secrets,
16 those ideas must be novel. *See Nadel v. Play-By-Play Toys & Novelties, Inc.*, 208 F.3d 368, 378
17 (2d Cir. 2000).

18 109. The idea of building a replica of an ancient Roman building is not a novel idea, for
19 the evidence showed that Caesars Palace had made wide use of Roman-theme design there since
20 1966 and that the idea of a replica of the Roman Coliseum was conceived by Mr. Bergé in 1990,
21 and again in 2000.

 110. Even if Milanian had established that his ideas were protectable or somehow
24 “intellectual property,” there is no evidence that Plaintiffs’ misappropriated them.

25 111. As discussed above, there was no evidence in that anyone involved in The
26 Colosseum concept or design knew of Milanian’s proposal to CWI, or that CWI misused (or even

1 still had) Milanian's proposal in 2000. Indeed, the August 1996 documents themselves suggest
2 that the proposal was discarded by CWI. The uncontroverted evidence was that none of the
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847
848
849
850
851
852
853
854
855
856
857
858
859
860
861
862
863
864
865
866
867
868
869
870
871
872
873
874
875
876
877
878
879
880
881
882
883
884
885
886
887
888
889
890
891
892
893
894
895
896
897
898
899
900
901
902
903
904
905
906
907
908
909
910
911
912
913
914
915
916
917
918
919
920
921
922
923
924
925
926
927
928
929
930
931
932
933
934
935
936
937
938
939
940
941
942
943
944
945
946
947
948
949
950
951
952
953
954
955
956
957
958
959
960
961
962
963
964
965
966
967
968
969
970
971
972
973
974
975
976
977
978
979
980
981
982
983
984
985
986
987
988
989
990
991
992
993
994
995
996
997
998
999
1000
1001
1002
1003
1004
1005
1006
1007
1008
1009
1010
1011
1012
1013
1014
1015
1016
1017
1018
1019
1020
1021
1022
1023
1024
1025
1026
1027
1028
1029
1030
1031
1032
1033
1034
1035
1036
1037
1038
1039
1040
1041
1042
1043
1044
1045
1046
1047
1048
1049
1050
1051
1052
1053
1054
1055
1056
1057
1058
1059
1060
1061
1062
1063
1064
1065
1066
1067
1068
1069
1070
1071
1072
1073
1074
1075
1076
1077
1078
1079
1080
1081
1082
1083
1084
1085
1086
1087
1088
1089
1090
1091
1092
1093
1094
1095
1096
1097
1098
1099
1100
1101
1102
1103
1104
1105
1106
1107
1108
1109
1110
1111
1112
1113
1114
1115
1116
1117
1118
1119
1120
1121
1122
1123
1124
1125
1126
1127
1128
1129
1130
1131
1132
1133
1134
1135
1136
1137
1138
1139
1140
1141
1142
1143
1144
1145
1146
1147
1148
1149
1150
1151
1152
1153
1154
1155
1156
1157
1158
1159
1160
1161
1162
1163
1164
1165
1166
1167
1168
1169
1170
1171
1172
1173
1174
1175
1176
1177
1178
1179
1180
1181
1182
1183
1184
1185
1186
1187
1188
1189
1190
1191
1192
1193
1194
1195
1196
1197
1198
1199
1200
1201
1202
1203
1204
1205
1206
1207
1208
1209
1210
1211
1212
1213
1214
1215
1216
1217
1218
1219
1220
1221
1222
1223
1224
1225
1226
1227
1228
1229
1230
1231
1232
1233
1234
1235
1236
1237
1238
1239
1240
1241
1242
1243
1244
1245
1246
1247
1248
1249
1250
1251
1252
1253
1254
1255
1256
1257
1258
1259
1260
1261
1262
1263
1264
1265
1266
1267
1268
1269
1270
1271
1272
1273
1274
1275
1276
1277
1278
1279
1280
1281
1282
1283
1284
1285
1286
1287
1288
1289
1290
1291
1292
1293
1294
1295
1296
1297
1298
1299
1300
1301
1302
1303
1304
1305
1306
1307
1308
1309
1310
1311
1312
1313
1314
1315
1316
1317
1318
1319
1320
1321
1322
1323
1324
1325
1326
1327
1328
1329
1330
1331
1332
1333
1334
1335
1336
1337
1338
1339
1340
1341
1342
1343
1344
1345
1346
1347
1348
1349
1350
1351
1352
1353
1354
1355
1356
1357
1358
1359
1360
1361
1362
1363
1364
1365
1366
1367
1368
1369
1370
1371
1372
1373
1374
1375
1376
1377
1378
1379
1380
1381
1382
1383
1384
1385
1386
1387
1388
1389
1390
1391
1392
1393
1394
1395
1396
1397
1398
1399
1400
1401
1402
1403
1404
1405
1406
1407
1408
1409
1410
1411
1412
1413
1414
1415
1416
1417
1418
1419
1420
1421
1422
1423
1424
1425
1426
1427
1428
1429
1430
1431
1432
1433
1434
1435
1436
1437
1438
1439
1440
1441
1442
1443
1444
1445
1446
1447
1448
1449
1450
1451
1452
1453
1454
1455
1456
1457
1458
1459
1460
1461
1462
1463
1464
1465
1466
1467
1468
1469
1470
1471
1472
1473
1474
1475
1476
1477
1478
1479
1480
1481
1482
1483
1484
1485
1486
1487
1488
1489
1490
1491
1492
1493
1494
1495
1496
1497
1498
1499
1500
1501
1502
1503
1504
1505
1506
1507
1508
1509
1510
1511
1512
1513
1514
1515
1516
1517
1518
1519
1520
1521
1522
1523
1524
1525
1526
1527
1528
1529
1530
1531
1532
1533
1534
1535
1536
1537
1538
1539
1540
1541
1542
1543
1544
1545
1546
1547
1548
1549
1550
1551
1552
1553
1554
1555
1556
1557
1558
1559
1560
1561
1562
1563
1564
1565
1566
1567
1568
1569
1570
1571
1572
1573
1574
1575
1576
1577
1578
1579
1580
1581
1582
1583
1584
1585
1586
1587
1588
1589
1590
1591
1592
1593
1594
1595
1596
1597
1598
1599
1600
1601
1602
1603
1604
1605
1606
1607
1608
1609
1610
1611
1612
1613
1614
1615
1616
1617
1618
1619
1620
1621
1622
1623
1624
1625
1626
1627
1628
1629
1630
1631
1632
1633
1634
1635
1636
1637
1638
1639
1640
1641
1642
1643
1644
1645
1646
1647
1648
1649
1650
1651
1652
1653
1654
1655
1656
1657
1658
1659
1660
1661
1662
1663
1664
1665
1666
1667
1668
1669
1670
1671
1672
1673
1674
1675
1676
1677
1678
1679
1680
1681
1682
1683
1684
1685
1686
1687
1688
1689
1690
1691
1692
1693
1694
1695
1696
1697
1698
1699
1700
1701
1702
1703
1704
1705
1706
1707
1708
1709
1710
1711
1712
1713
1714
1715
1716
1717
1718
1719
1720
1721
1722
1723
1724
1725
1726
1727
1728
1729
1730
1731
1732
1733
1734
1735
1736
1737
1738
1739
1740
1741
1742
1743
1744
1745
1746
1747
1748
1749
1750
1751
1752
1753
1754
1755
1756
1757
1758
1759
1760
1761
1762
1763
1764
1765
1766
1767
1768
1769
1770
1771
1772
1773
1774
1775
1776
1777
1778
1779
1780
1781
1782
1783
1784
1785
1786
1787
1788
1789
1790
1791
1792
1793
1794
1795
1796
1797
1798
1799
1800
1801
1802
1803
1804
1805
1806
1807
1808
1809
1810
1811
1812
1813
1814
1815
1816
1817
1818
1819
1820
1821
1822
1823
1824
1825
1826
1827
1828
1829
1830
1831
1832
1833
1834
1835
1836
1837
1838
1839
1840
1841
1842
1843
1844
1845
1846
1847
1848
1849
1850
1851
1852
1853
1854
1855
1856
1857
1858
1859
1860
1861
1862
1863
1864
1865
1866
1867
1868
1869
1870
1871
1872
1873
1874
1875
1876
1877
1878
1879
1880
1881
1882
1883
1884
1885
1886
1887
1888
1889
1890
1891
1892
1893
1894
1895
1896
1897
1898
1899
1900
1901
1902
1903
1904
1905
1906
1907
1908
1909
1910
1911
1912
1913
1914
1915
1916
1917
1918
1919
1920
1921
1922
1923
1924
1925
1926
1927
1928
1929
1930
1931
1932
1933
1934
1935
1936
1937
1938
1939
1940
1941
1942
1943
1944
1945
1946
1947
1948
1949
1950
1951
1952
1953
1954
1955
1956
1957
1958
1959
1960
1961
1962
1963
1964
1965
1966
1967
1968
1969
1970
1971
1972
1973
1974
1975
1976
1977
1978
1979
1980
1981
1982
1983
1984
1985
1986
1987
1988
1989
1990
1991
1992
1993
1994
1995
1996
1997
1998
1999
2000
2001
2002
2003
2004
2005
2006
2007
2008
2009
2010
2011
2012
2013
2014
2015
2016
2017
2018
2019
2020
2021
2022
2023
2024
2025
2026
2027
2028
2029
2030
2031
2032
2033
2034
2035
2036
2037
2038
2039
2040
2041
2042
2043
2044
2045
2046
2047
2048
2049
2050
2051
2052
2053
2054
2055
2056
2057
2058
2059
2060
2061
2062
2063
2064
2065
2066
2067
2068
2069
2070
2071
2072
2073
2074
2075
2076
2077
2078
2079
2080
2081
2082
2083
2084
2085
2086
2087
2088
2089
2090
2091
2092
2093
2094
2095
2096
2097
2098
2099
2100
2101
2102
2103
2104
2105
2106
2107
2108
2109
2110
2111
2112
2113
2114
2115
2116
2117
2118
2119
2120
2121
2122
2123
2124
2125
2126
2127
2128
2129
2130
2131
2132
2133
2134
2135
2136
2137
2138
2139
2140
2141
2142
2143
2144
2145
2146
2147
2148
2149
2150
2151
2152
2153
2154
2155
2156
2157
2158
2159
2160
2161
2162
2163
2164
2165
2166
2167
2168
2169
2170
2171
2172
2173
2174
2175
2176
2177
2178
2179
2180
2181
2182
2183
2184
2185
2186
2187
2188
2189
2190
2191
2192
2193
2194
2195
2196
2197
2198
2199
2200
2201
2202
2203
2204
2205
2206
2207
2208
2209
2210
2211
2212
2213
2214
2215
2216
2217
2218
2219
2220
2221
2222
2223
2224
2225
2226
2227
2228
2229
2230
2231
2232
2233
2234
2235
2236
22

1 Milanian; in connection with the development of The Colosseum.

2 **B. Permanent Injunction**

3 114. The requirements for a permanent injunction are virtually the same as those for a
4 preliminary injunction, except that for a permanent injunction success on the merits must be
5 shown. *See Hilton Hotels Corp.*, 978 F. Supp. at 1345. Consequently, Plaintiffs must also show
6 (1) irreparable harm; (2) that the balance of the equities weigh in their favor; and (3) that the grant
7 of the injunction is in the public interest. *See Stanley v. University of Southern California*, 13 F.3d
8 1313, 1319 (9th Cir. 1994).

9
10 **1. Irreparable Harm**

11 115. Having concluded that Plaintiffs have succeeded on proving infringement, the
12 Court need not address the issue of irreparable harm because as indicated previously, once
13 trademark infringement is established through a showing of a likelihood of confusion, irreparable
14 injury is presumed. *See Brookfield*, 174 F.3d at 1066.

15
16 **2. Balance of the Equities**

17 116. The equities also weigh heavily in Plaintiffs' favor. Plaintiffs have established that
18 they have invested millions of dollars promoting the marks. They (and others) have also commit-
19 ted enormous resources in connection with opening THE COLOSSEUM entertainment center.
20 THE COLOSSEUM and EMPIRE marks have become associated with the exceptional products
21 and services offered by the Plaintiffs. The potential confusion in allowing Milanian to display
22 these marks on the Internet is likely to damage Plaintiffs' reputation. Consequently, the balance of
23 the equities weighs in favor of enjoining defendant from his further unlawful use.
24

25
26

1 **3. The Public Interest**

2 117. The public interest factor also weighs in Plaintiffs' favor. An important factor in
3 protecting trademarks is to avoid consumer confusion, which is in the public interest. *See, e.g.,*
4 *Sega Enterprises Ltd. v. Accolade, Inc.*, 977 F.2d 1510, 1523 (9th Cir. 1992) (in the context of
5 copyright infringement). It has been established that, Milanian's display of the mark will cause the
6 consumer to be confused as to the source of the products and services offered by Milanian. It is in
7 the public interest not to allow Milanian to mislead the public into thinking that the services
8 offered by Milanian are somehow related to the Plaintiffs when in fact they are not. Enjoining
9 defendants from further display or future use of the marks is necessary to prevent consumer
10 confusion.
11

12
13 118. The Court thus finds that Plaintiffs have satisfied the requirements for a permanent
14 injunction, precluding defendant Milanian from using or displaying COLOSSEUM or EMPIRE
15 including the registration of domain names incorporating these trademarks.

16 119. This Court orders that Milanian, his agents, servants and employees, or any person
17 or entity claiming from, through or under him, and all those persons in active concert with them
18 are hereby forever enjoined from using the marks THE COLOSSEUM, ROME LAS VEGAS
19 COLOSSEUM, THE ROMAN EMPIRE and THE EMPIRE, or any designations incorporating
20 the words "COLOSSEUM or "EMPIRE" similar thereto or likely to cause confusion therewith, in
21 the sale, offering for sale, distribution or advertising of casino and casino-related products and
22 services, hotel, restaurant and entertainment services, consulting services to the casino or hotel
23 industry, or similar merchandise and services in any locality in the United States. This injunction
24 includes the registration of any domain name incorporating these terms
25
26

1 120. The Court also finds that based on defendant Milanian's failure to bring any
2 counterclaims relating to 1996 events, that he or any person or entity claiming from, through or
3 under him, has waived such claims and is enjoined from filing such claims in any court.

4 121. The Court also enjoins Milanian from taking any further action to register any of
5 the aforementioned trademarks.
6

7 **C. Cancellation of Applications and Registrations**

8 122. Section 37 of the Lanham Act, 15 U.S.C. §1119, confers upon the Courts concu-
9 rent authority with the USPTO to cancel or otherwise determine the rights to trademark registra-
10 tions. Cancellation is an appropriate remedy where the litigation revolves around an action for
11 infringement involving a registered mark. *See Sperry Rand Corp. v. Seawol Distributors, Inc.*, 140
12 U.S.P.Q. 532 (S.D. Cal. 1964). As this Court has determined that Plaintiffs have priority over
13 defendants to THE COLOSSEUM, ROME LAS VEGAS COLOSSEUM, THE ROMAN EMPIRE
14 and THE EMPIRE marks, it hereby orders that the PTO cancel Milanian's applications and/or
15 registrations related to the above marks.
16

17 **D. Transfer of Domain Names**

18 123. The use of a domain name that infringes a owner's trademark rights provides a
19 basis for transferring ownership of the domain name. *See* 15 U.S.C. § 1125(d)(2)(D). This Court
20 finds that Plaintiffs have demonstrated that the domain names lasvegascolosseum.com,
21 colosseumlv.com, and colosseumlasvegas.com are likely to cause consumer confusion. The three
22 most important *Sleekcraft* factors considered by Courts in determining the likelihood of confusion
23 in the context of web names are (1) the similarity of the marks, (2) the relatedness of the goods or
24 services, and (3) the parties' simultaneous use of the Web as a marketing channel. *GoTo.Com*,
25
26

1 *Inc. v. Walt Disney Co.*, 202 F.3d 1199, 1204 (9th Cir, 2000). Although the court has discussed
2 these factors in detail above, it will briefly address them as they apply to these domain names.

3 124. This court finds a visible similarity between the domain names when compared to
4 Plaintiffs' COLOSSEUM mark. Further, Plaintiffs use this web site in promoting its services
5 under the COLOSSEUM mark and have had approximately one million "unique" visitors on the
6 site in only the last six months making it a pivotal marketing tool. This Court therefore concludes
7 that allowing Milanian to maintain ownership of the lasvegascolosseum.com, colosseumlv.com,
8 and colosseumlasvegas.com domain names is likely to cause consumer confusion, and orders the
9 Milanian, or any assignee or transferee, to transfer the domain names to CWI within ten business
10 days of this order. Milanian shall pay any transfer fees necessary to accomplish their transfer.

11
12
13 **E. Attorneys' Fees**

14 125. Section 35(a) of the Lanham Act provides that a court may award attorneys fees to
15 the prevailing party in "exceptional cases." 15 U.S.C. § 1117(a). Because prevailing parties are
16 entitled to recover for claims under Section 43(a), one who holds common law trademark rights is
17 entitled to recover fees. *See id.*

18 126. Generally, a trademark case is exceptional for the purposes of an award of attor-
19 neys' fee when the infringement is malicious, fraudulent or willful. *Mirage Resorts, Inc. v. Stripe*,
20 152 F. Supp. 2d 1208, 1218 (D. Nev. 2000) (citing *Lindy Pen Co. Inc. v. Bic Pen Corp.*, 982 F.2d
21 1400, 1409 (9th Cir. 1993). The "exceptional cases" requirement is also satisfied where the court
22 finds that claims with respect to trademark rights are "groundless, unreasonable, vexatious, or
23 pursued in bad faith." *Cairns v. Franklin Mint Co.*, 292 F.3d 1139 (9th Cir. 2002) (citation
24 omitted); *Lindy Pen*, 982 F.2d at 1405.
25
26

1 127. Irrespective of whether the party seeking the fees is a plaintiff or defendant, the
2 issue is whether the claims or defenses were “groundless,” “unreasonable,” or maintained “in bad
3 faith” so as to meet the “exceptional cases” requirement. *See Stephen W. Boney, Inc. v. Boney*
4 *Services, Inc.*, 127 F.3d 821, 827 (9th Cir. 1997).

6 128. Here, Plaintiffs demonstrated that Milanian’s attempt to pirate away their rights in
7 COLOSSEUM and EMPIRE theme marks was part of his overarching plan to traffic in trade-
8 marks. Notwithstanding the statutory requirements, Milanian filed many trademark applications
9 with no *bona fide* intent to use the trademark in question. His pattern or practice was to file bogus
10 intent-to-use applications for marks, and attempt to sell or license the “rights” in the marks.

12 129. Milanian’s calculated application for THE COLOSSEUM mark just after the
13 announcement of the construction of THE COLOSSEUM showroom, as well as his concealing of
14 a claim in these alleged rights to the mark until just days after the announcement of its opening
15 with Celine Dion performing, demonstrates that his objective was to hold Plaintiffs hostage.
16 Those facts make this case exceptional under 15 U.S.C. § 1117(a) and justify entering a judgment
17 against Milanian and in favor of Plaintiffs in an amount equal to their attorneys’ fees in prosecut-
18 ing this matter.

20 130. In addition, Milanian’s “legal positions” are further proof that his case was
21 meritless. For example, notwithstanding his demanding June 1 telephone call to PPE, Milanian
22 argued in his “summary judgment” brief that Plaintiffs’ use of The Colosseum mark was generic,
23 and therefore could not possibly infringe any alleged rights he had in the marks. That position
24 means that his telephone call to PPE’s offices on June 1, 2002, demand to speak with the CEO,
25 and statement that Plaintiffs were violating his rights in The Colosseum mark, all had no legiti-
26

1 mate purpose. That course of conduct also makes this case "exceptional" and justifies an award of
2 fees.

3 131. Under Nevada law, attorneys' fees may be awarded to the holder of a common law
4 mark where the infringer's acts are found to be willful and calculated to trade upon the goodwill of
5 the trademark owner. *See 7-11 Minit Markets, Inc. v. Southland Corp.*, 301 F. Supp. 1000, 1001
6 (D. Nev 1969). For the reasons stated above, Milanian's conduct constituted infringement and
7 unfair competition under Nevada law and was both willful and was calculated to trade upon the
8 goodwill of Plaintiffs, thereby entitling Plaintiffs to an award of attorneys' fees under Nevada law.

9 132. Nevada State Law also provides for the award of attorneys fees to the prevailing
10 party in a trade secret misappropriation case in Nev. Rev. Stat. 600A.060. Plaintiffs are also
11 entitled to fees for this claim as well. The Court therefore orders Plaintiffs to submit an applica-
12 tion detailing the attorneys' fees and costs expended in relation to those claims within 30 days of
13 this order. Defendant may submit an opposition to this brief limited to the issue of the reasonable-
14 ness of such fees within fifteen days of Plaintiffs' submission.

15 **JUDGMENT**

16 IT IS SO ORDERED, ADJUDGED, AND DECREED.

17 DATED this 19 day of February, 2003.

18
19
20
21
22
23
24
25
26

ROGER L. HUNT
UNITED STATES DISTRICT JUDGE

PITNEY, HARDIN, KIPP & SZUCH LLP

(MAIL TO) P.O. BOX 1945, MORRISTOWN, N.J. 07962-1945
(DELIVERY TO) 200 CAMPUS DRIVE, FLORHAM PARK, N.J. 07932-0950
(973) 966-6300

ATTORNEYS FOR Petitioners
Caesars World, Inc. and Park Place
Entertainment Corporation

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ATLANTIC COUNTY
Docket No. ATL-L-230-03

CYRUS MILANIAN,

Plaintiff,

v.

CAESARS WORLD, INC. and PARK
PLACE ENTERTAINMENT CORP.,

Defendants.

:

:

:

:

:

NOTICE OF FILING A NOTICE OF
REMOVAL TO THE UNITED STATES
DISTRICT COURT FOR THE
DISTRICT OF NEW JERSEY

TO: New Jersey Superior Court
Clerk, Atlantic County
Civil Courthouse
1201 Bacharach Boulevard
Atlantic City, NJ 08401

Kenneth S. Goodkind, Esq.
Flaster, Greenberg, P.C.
1810 Chapel Avenue West, 3rd Fl.
Cherry Hill, NJ 08002-4609

PLEASE TAKE NOTICE that on March 19, 2003, the undersigned
attorneys for defendants Caesars World, Inc. and Park Place

EXHIBIT • C

Entertainment Corporation are filing in the United States District Court for the District of New Jersey a Notice of Removal, pursuant to 28 U.S.C. §1446(a), of the foregoing matter.

PLEASE TAKE FURTHER NOTICE that pursuant to 28 U.S.C. §1446(d), the Clerk of the Superior Court of New Jersey shall effect the removal of the above-captioned action to the United States District Court for the District of New Jersey, and the State court shall proceed no further unless and until this action is remanded.

PLEASE TAKE FURTHER NOTICE that true copies of the Notice of Removal and Certification of Service are attached hereto as Exhibits A and B and are served and filed herewith pursuant to 28 U.S.C. §1446(d).

PITNEY, HARDIN, KIPP & SZUCH LLP
Attorneys for Petitioners
Caesars World, Inc. and Park
Place Entertainment Corporation

By:



RICHARD H. BROWN (RB5858)

DATED: March 18, 2003

PITNEY, HARDIN, KIPP & SZUCH LLP

(MAIL TO) P.O. BOX 1945, MORRISTOWN, N.J. 07962-1945
(DELIVERY TO) 200 CAMPUS DRIVE, FLORHAM PARK, N.J. 07932-0950
(973) 966-6300

ATTORNEYS FOR Petitioners
Caesars World, Inc. and Park Place
Entertainment Corporation

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

CYRUS MILANIAN,

HONORABLE

Plaintiff,

Civil Action No.

v.

:

CAESARS WORLD, INC. and PARK
PLACE ENTERTAINMENT CORP.,

:

NOTICE OF REMOVAL
PURSUANT TO
28 U.S.C. § 1446(a)

:

Defendants.

:

**TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY:**

Petitioners Caesars World, Inc. ("CWI") and Park Place
Entertainment Corporation ("PPE"), defendants in the above-
captioned matter, by its undersigned attorneys, Pitney, Hardin,

Kipp & Szuch LLP, file this Notice of Removal from the Superior Court of New Jersey, Law Division, Atlantic County, in which it is now pending, to the United States District Court for the District of New Jersey. In support of removal, petitioners aver and allege as follows:

1. Plaintiff Cyrus Milanian ("Milanian") instituted this civil action, entitled *Cyrus Milanian v. Caesars World, Inc. and Park Place Entertainment Corp.*, Docket No. ATL-L-230-03, in the Superior Court of New Jersey, Law Division, Atlantic County (the "State Action"). Milanian asserts claims for, among other things, breach of contract, theft of trade secrets and misrepresentation. There have been no further proceedings in the State Action.

2. Annexed hereto as Exhibit A are copies of the Summonses and Complaint filed by Milanian in the State Action on January 27, 2003 and served on petitioners on February 27, 2003.

3. Petitioners first received a copy of the Complaint in the State Action on February 27, 2003, the date on which their respective registered agents were served. This petition is being filed within thirty (30) days after service on petitioners of the initial Summonses and Complaint in the State Action.

4. This Court has original jurisdiction over this action under 28 U.S.C. § 1332, and this action may be removed to this

Court by petitioners pursuant to 28 U.S.C. § 1441, as it is a civil action between citizens of different states and the amount in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs.

5. No prior application for the same or similar relief has been made to this or to any other court.

A. Complete Diversity Exists

6. Complete diversity of citizenship exists between Milanian and petitioners.

7. As claimed in his Complaint, Milanian was, at the time of the institution of this civil action, an individual residing in New Jersey. See Complaint, Paragraph 1 (Exhibit A).

8. Contrary to Milanian's allegations in paragraph 2 of his Complaint, petitioner, CWI is, and was at the time of the institution of this civil action, a Delaware corporation, with its principal place of business at 3930 Howard Hughes Parkway, Las Vegas, Nevada.

9. Petitioner PPE is, and was at the time of the institution of this civil action, a Delaware corporation. Contrary to Milanian's allegations in paragraph 3, PPE's principal place of business is at 3930 Howard Hughes Parkway, Las Vegas, Nevada.

10. Because Milanian's citizenship is diverse from that of petitioners, complete diversity exists as required by 28 U.S.C. §1332. Thus, this action may be removed pursuant to 28 U.S.C. §1441.

B. The Amount in Controversy Requirement is Satisfied

11. The amount in controversy in this action exceeds the sum or value of \$75,000.00, exclusive of interest and costs. In the Complaint, Milanian seeks, *inter alia*, compensatory damages, consequential damages, exemplary damages, disgorgement of profits, attorneys fees and costs of suit. Upon information and belief, the amount of Milanian's alleged damage claim exceeds \$75,000.00.

12. Accordingly, the jurisdictional amount required by 28 U.S.C. § 1332 is satisfied.

C. Fraudulent Joinder of Defendant Park Place Entertainment Corporation

13. Milanian has asserted claims against PPE in an apparent effort to defeat diversity. That tactic fails because, as discussed above, CWI and PPE are foreign corporations, each having its principal place of business in Nevada.

14. The factual allegations raised and the legal claims asserted by Milanian in the State Action relate exclusively to CWI, and do not involve PPE. Milanian predicates his claims on alleged conduct between Milanian and CWI supposedly taking place

in 1996. At that time, PPE had no relationship to CWI. It was not until 1999 -- three years after the alleged conduct giving rise to Milanian's claims in the State Action -- that PPE acquired CWI. Although CWI was and continues to be a wholly-owned subsidiary of PPE, there is absolutely no basis for Milanian to allege that PPE owed any duty to him, or that PPE is somehow responsible for the alleged acts of one of its subsidiaries.

15. Therefore, even if Milanian could establish that PPE's principal place of business is in Atlantic City, New Jersey (which he cannot), this Court should retain jurisdiction because Milanian has fraudulently joined PPE in order to destroy diversity. See *Abels v. State Farm Fire & Casualty Company*, 770 F.2d 26, 32 (3d Cir. 1985) ("Courts have found joinder to be fraudulent where there is no reasonable basis in fact or colorable ground supporting the claim against the joint defendant, or no real intention in good faith to prosecute the action against the defendant or seeks a joint judgment.") (quoting *Goldberg v. CPC International*, 495 F.Supp. 233, 239 (N.D. Cal. 1980)).

WHEREFORE, petitioners Caesars World, Inc. and Park Place Entertainment Corporation respectfully request that the above-

captioned action be removed from the Superior Court of New Jersey, Law Division, Atlantic County, to this Court.

PITNEY, HARDIN, KIPP & SZUCH LLP
Attorneys for Petitioners
Caesars World, Inc. and Park
Place Entertainment Corporation

By: 

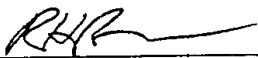
RICHARD H. BROWN

DATED: March 18, 2003

CERTIFICATION PURSUANT TO L. CIV. R. 11.2

I certify that the matter in controversy is the subject of an action pending in the United States District Court for the District of Nevada bearing the caption *Caesars World, Inc. and Park Place Entertainment Corporation v. Cyrus Milanian and the New Las Vegas Development Company, LLC*, Case No. S-02-1287-RLH (RJJ). Although there has been a final judgment entered in that matter, Milanian has filed a post-trial motion.

PITNEY, HARDIN, KIPP & SZUCH LLP
Attorneys for Petitioners
*Caesars World, Inc. and Park Place
Entertainment Corporation*

By: 
RICHARD H. BROWN (RB5858)

Dated: March 18, 2003

RECEIVED and
FILED

JAN 27 2003

ATLANTIC COUNTY
LAW DIVISION

FLASTER/GREENBERG P.C.
Commerce Center
1810 Chapel Avenue West, 3rd Floor
Cherry Hill, New Jersey 08002-4609
Phone: (856) 641-1900
Attorneys for Plaintiff

CYRUS MILANIAN

Plaintiff

v.

CAESARS WORLD, INC. and PARK
PLACE ENTERTAINMENT CORP.

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
ATLANTIC COUNTY
DOCKET NO.:

Civil Action

COMPLAINT

CYRUS MILANIAN, by and through his undersigned attorneys, by way of Complaint in this action hereby says:

1. Plaintiff, Cyrus Milanian ("Milanian" or "Plaintiff"), is an individual who resides in Jersey City, Hudson County, New Jersey.
2. Caesars World, Inc. ("CW") is a corporation organized and existing under the laws of the State of Florida, and has an office and principal place of business in Atlantic City, New Jersey.
3. Park Place Entertainment Corp. ("PP") is a corporation organized and existing under the laws of the State of Delaware, having an office and principal place of business in Atlantic City, New Jersey.
4. CW is a wholly owned subsidiary of PP.
5. On or about May 12, 1996, Milanian submitted an eight-page outline of a confidential business plan entitled the "Marianne Project" to CW in Las Vegas, Nevada.

Ex. A

6. The Mariani Project included a sub-project for the construction of a replica of the ancient Coliseum of Rome and the integration thereof into the Caesar's Palace property of CW in Las Vegas, Nevada.

7. The replica Coliseum was to include an entertainment complex including restaurants, theatres, shops and special events.

8. The above Plaintiff's business plan was novel.

9. By letter dated August 12, 1996, CW declined to further consider the Mariani Project and acknowledged the confidentiality of Plaintiff's submission.

10. By a certificate dated August 14, 1996, David Mitchell, a vice president of CW, confirmed receipt of the Mariani Project submission, advised Plaintiff that CW had no interest therein "at that time" and further confirmed that the submission was confidential.

11. David Mitchell's certificate of August 14, 1996 was notarized by the general counsel of CW.

12. In April 2001, CW and PP announced the construction of a replica of the Coliseum of Rome as an extension of their property in Las Vegas, and the use thereof as an entertainment and convention venue, which is presently scheduled to open in March 2003.

13. The construction of the replica detailed in the preceding paragraph was identical to the idea previously presented by Plaintiff.

14. Despite the fact that Plaintiff had presented the idea of constructing a replica of the Coliseum of Rome as an extension of the CW and PP property in Las Vegas, Defendants failed to provide Plaintiff with any credit, recognition, compensation or remuneration in any form.

COUNTY
THEFT OF TRADE SECRETS

15. The preceding paragraphs are incorporated herein by reference as if set forth at length.
16. Plaintiff's confidential submissions, containing his ideas, concepts, market research, business plans, contacts and other information related to the Martania Project to Defendants, offered numerous advantages over other entertainment venues.
17. At the time of Plaintiff's presentation and confidential disclosure to the Defendants, there was no such tourist attraction in the Las Vegas area or anywhere in the United States directed to Rome's Coliseum.
18. Prior to the disclosure of the Plaintiff's new concepts and plans in connection with the Martania Project to Defendants, there did not exist an entertainment complex replicating Rome's Coliseum and including restaurants, theaters, shops and special events.
19. Plaintiff's ideas, plans, market research, contact information, concepts, and presentations, which Plaintiff submitted to Defendants and their agents, constituted valuable trade secrets of Plaintiff, contemplated for use by, and with, his businesses, and having great commercial value to Defendants.
20. Plaintiff's trade secrets taught Defendants, in business and legal terms, expressions, methods and means of implementation of Plaintiff's ideas, plans, market research, contact information and concepts disclosed to Defendants.
21. Such trade secrets were not theretofore known to Defendants or otherwise known to the public, and could not be independently obtained or derived by Defendants by proper, lawful means.

22. Plaintiff, at all times, undertook reasonable efforts under the circumstances to maintain the secrecy and confidentiality of his trade secrets and of all disclosures he made to Defendants and their agents, which disclosures were all made in confidence.

23. Plaintiff's trade secrets were thereby sufficiently secret, and derived economic value from the fact that they were not known to the public, including Defendants, who could, did, and continue to obtain independent economic value from their disclosure and use.

24. Plaintiff's trade secrets thereby provided to Defendants an advantage, and/or an opportunity to obtain an advantage, that they would not otherwise have had.

25. Defendants, using improper means, knowingly misappropriated Plaintiff's trade secrets with willful and malicious intent to deprive Plaintiff of his intellectual property and of rights held therein by making unauthorized uses and disclosures of Plaintiff's trade secrets.

26. Defendants thereby willfully and maliciously misappropriated Plaintiff's trade secrets, to the detriment of Plaintiff.

27. Plaintiff has been greatly damaged by Defendants' misappropriation of his trade secrets and Defendants have been unjustly enriched.

WHEREFORE, Plaintiff demands judgment in his favor against Defendants for compensatory damages, consequential damages, exemplary damages, attorneys fees and costs, disgorgement of profits and any such other relief as this Court deems just and appropriate.

COUNT II IDEA MISAPPROPRIATION

28. The preceding paragraphs are incorporated herein by reference as if set forth at length.

29. Defendants herein misappropriated Plaintiff's idea for the construction of a replica of the Colosseum of Rome, and made use of Plaintiff's idea for their own benefit.

30. Defendants were aided in the development of their own concepts and products by the misappropriation of Plaintiff's ideas.

30. Plaintiff's idea was novel at the time that it was presented to Defendants.

31. Plaintiff's idea was also disclosed in confidence, as the Defendants themselves have admitted and certified.

32. As a direct and proximate result of Defendant's actions, Plaintiff has sustained substantial damages.

WHEREFORE, Plaintiff demands judgment in his favor against Defendants for compensatory damages, consequential damages, exemplary damages, attorneys fees and costs, disgorgement of profits and any such other relief as this Court deems just and appropriate.

COUNT III
BREACH OF EXPRESS CONTRACT

33. The preceding paragraphs are incorporated herein by reference as if set forth at length.

34. Defendants expressly agreed that the Marlania Project, as well as the information submitted by Plaintiff, was confidential and would be kept confidential.

35. By agreeing, in writing, to maintain the confidentiality of Plaintiff's Marlania Project, an express contract arose between the parties.

36. Defendants agreed that they would not utilize Plaintiff's information unless authorized to do so. _____

37. Defendants used Plaintiff's Marlania Project, including trade secrets and proprietary rights, in conscious disregard of their duty to obtain Plaintiff's permission to do so.

38. Defendants are in breach of the contract.

39. Plaintiff has not received legal or equitable consideration under this contract commensurate to the value of the consideration Defendants received from Plaintiff.

40. Plaintiff has suffered, and continues to suffer, harm as a direct and proximate result of such breach including, but not limited to, economic harm.

41. These acts and omissions of Defendant constituted a material breach of its contract with Plaintiff thereby causing him to suffer irreparable harm.

WHEREFORE, Plaintiff demands judgment in his favor against Defendants for compensatory damages, consequential damages, exemplary damages, attorneys fees and costs, disgorgement of profits and any such other relief as this Court deems just and appropriate.

COUNT IV BREACH OF IMPLIED CONTRACT

42. The preceding paragraphs are incorporated herein by reference as if set forth at length.

43. Defendants freely, knowingly and willingly obtained Plaintiff's confidential proprietary information and materials described herein pursuant to an understanding that, and under conditions that, they were not to be used without Plaintiff's prior written permission or consent and adequate compensation.

44. As such, an implied contract arose by operation of law between Plaintiff and Defendants.

45. The terms of this contract were that Defendants would compensate Plaintiff if they or their agents disclosed or used or otherwise benefited from any of the ideas, concepts, market research, business plans, concepts and other materials and ideas of Plaintiff.

46. Defendants did, in fact, knowingly and intentionally use, disclose and otherwise derive benefit from Plaintiff's ideas, concepts, market research, business plans, contacts and other materials and items in conscious disregard of Plaintiff's rights under said implied contract.

47. Plaintiff has not received any equitable or legal consideration under said implied contract.

48. Defendants have thereby been unjustly enriched as a result of their wrongfully acquired gains from Plaintiff to the detriment of Plaintiff.

49. Plaintiff is thereby entitled to restitution for the unjust enrichment of Defendants attendant to their development and use, present and future, of all appropriated ideas, concepts, market research, business plans, contacts and other materials of Plaintiff, as described above.

WHEREFORE, Plaintiff demands judgment in his favor against Defendants for compensatory damages, consequential damages, exemplary damages, attorneys fees and costs, disgorgement of profits and any such other relief as this Court deems just and appropriate.

COUNT IV
BREACH OF CONFIDENTIAL RELATIONSHIP

50. The preceding paragraphs are incorporated herein by reference as if set forth at length.

51. A confidential relationship arose and then existed between Plaintiff and Defendants.

52. Defendants, by their acts described herein, knowingly and intentionally breached the express and implied terms of said confidential relationship with the specific intent to profit therefrom.

53. Plaintiff has neither consented to nor authorized the use or disclosure of any of his ideas, concepts, market research, business plans, contacts and other materials and items by anyone, and has otherwise not abandoned same.

54. Plaintiff did not have reason to suspect that such a breach of confidence would occur, during or after the period in which he disclosed his ideas, concepts, market research, business plans, contacts and other materials to Defendants.

55. Defendants were aware that their breach of said confidential relationship helped them to facilitate use of Plaintiff's confidentially disclosed ideas, concepts, market research, business plans, contacts and other materials.

56. Defendants have been unjustly enriched by their breach of this confidential relationship with Plaintiff, this to the detriment of Plaintiff.

WHEREFORE, Plaintiff demands judgment in his favor against Defendants for compensatory damages, consequential damages, exemplary damages, attorneys fees and costs, disgorgement of profits and any such other relief as this Court deems just and appropriate.

COUNT V MISREPRESENTATION

57. The preceding paragraphs are incorporated herein by reference as if set forth at length.

58. If allowed to use Plaintiff's ideas, designs, methods and concepts at all, Defendants had a duty to inform Plaintiff of their intentions to use Plaintiff's ideas, designs, methods and concepts at all.

methods and concepts in the construction of a replica of the Coliseum of Rome as an extension of their property in Las Vegas prior to actually doing so.

59. Defendants did not exercise reasonable care in processing Plaintiff's 1996 submissions and did not communicate to Plaintiff their true intentions regarding the Coliseum project.

60. In order to induce Plaintiff to share his confidential proposal, Defendants represented that all information would remain confidential.

61. Milanini relied upon these representations when he disclosed the elements of the Mariani Project to Defendants.

62. These representations were false when made.

63. The Defendants had actual or constructive knowledge of their falsity and/or should have had knowledge that the representations were false.

64. As a proximate result of Defendants' misrepresentations, Plaintiff has suffered substantial damages.

WHEREFORE, Plaintiff demands judgment in his favor against Defendants for compensatory damages, consequential damages, exemplary damages, attorneys fees and costs, disgorgement of profits and any such other relief as this Court deems just and appropriate.

COUNT VI DETRIMENTAL RELIANCE

65. The preceding paragraphs are incorporated herein by reference as if set forth at length.

66. Defendants promised Plaintiff that all information provided would remain confidential.

67. Defendants should have expected that Milanian would rely on the promise.

68. Plaintiff did in fact rely upon this promise, to his substantial detriment.

69. As a direct and proximate result of Defendants' breach, the Plaintiff has suffered substantial damages.

WHEREFORE, Plaintiff demands judgment in his favor against Defendants for compensatory damages, consequential damages, exemplary damages, attorneys fees and costs, disgorgement of profits and any such other relief as this Court deems just and appropriate.

CERTIFICATION PURSUANT TO RULE 4:5-1

Pursuant to the provisions of Rule 4:5-1, I hereby certify as follows:

1. Except as stated below, the matter in controversy is not the subject of any other pending action in any other court or of a pending arbitration proceeding in this jurisdiction.


2. A related action has been pending in the U.S. District Court in the District of Nevada between these parties captioned as *Caesars World, Inc. and Park Place Entertainment Corporation v. Cyrus Milstein and The New Las Vegas Development Comp., LLC*. CV-S-03-1287-RLH-RJJ

3. It is contemplated that the matter in controversy will not become the subject of any other action in any court or of a pending arbitration proceeding.

4. Plaintiff is not aware of any other party that needs to be joined in this proceeding. I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.

FLASTER GREENBERG P.C.

Dated: January 24, 2003

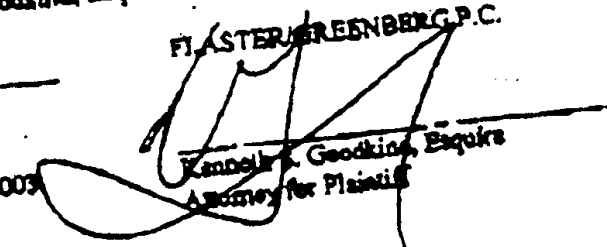

Kenneth S. Goodkind, Esquire
Attorney for Plaintiff

DESIGNATION OF TRIAL COUNSEL

Kenneth S. Goodkind, Esquire is hereby designated as trial counsel for Plaintiff.

FLASTER GREENBERG P.C.

Dated: January 24, 2003

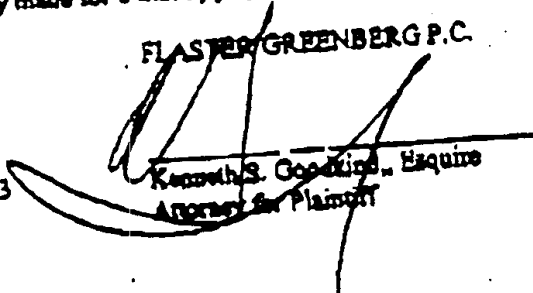

Kenneth S. Goodkind, Esquire
Attorney for Plaintiff

JURY TRIAL DEMAND

Demand is hereby made for a trial by jury.

FLASTER GREENBERG P.C.

Dated: January 24, 2003


Kenneth S. Goodkind, Esquire
Attorney for Plaintiff

1 ANDRAS F. BABERO, ESQ.
2 Nevada Bar No.: 001658
3 9500 Hillwood Drive, Suite 130
4 Las Vegas, Nevada 89134
5 (702) 474-4100
6 Attorney for Defendant

RECEIVED
15 00 00X

Mar 10 2003

U.S. DISTRICT COURT
DISTRICT OF NEVADA

7 UNITED STATES DISTRICT COURT
8 DISTRICT OF NEVADA

9 CAESARS WORLD, INC. and PARK PLACE
10 ENTERTAINMENT CORPORATION,

11 Plaintiffs

12 v.

13 CYRUS MILANIAN and THE NEW LAS
14 VEGAS DEVELOPMENT COMPANY, LLC.

15 Defendants.

Case No. CV-S-02-1287-RLH-RJJ

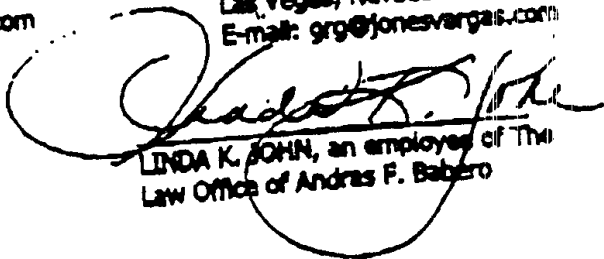
CERTIFICATE OF MAILING

16 CERTIFICATE OF MAILING

17 I HEREBY CERTIFY that a true and correct copy of the foregoing DEFENDANT CYRUS
18 MILANIAN'S MOTION FOR RECONSIDERATION AND ALTERNATION OF JUDGMENT was placed
19 in the U. S. mail, postage pre-paid and e-mailed on this 6th day of March, 2003, to:

21 Stephen W. Feingold
22 Richard H. Brown
23 PITNEY, HARDIN, KIPP & SZUCH, LLP
24 685 Third Avenue
25 New York, New York 10017-4024
26 E-mail: sfeingold@pitneyhardin.com

Gary R. Goodheart, Esq
Nevada Bar # 1203
JONES VARGAS
3773 Howard Hughes Parkway
Third Floor South
Las Vegas, Nevada 89109
E-mail: grg@jonesvargas.com

27 
28 LINDA K. JOHN, an employee of The
Law Office of Andras F. Babero

Received 3-8-03
JV GRG

DULY SERVED

DATE 2/27/03

BY [Signature]

Sherrif
Special Deputy

FLASTER/GREENBERG, P.C.
By: Kenneth S. Goodkind, Esquire
Commerce Center, Third Floor
1810 Chapel Avenue West
Cherry Hill, New Jersey 08002-4609
Phone: (856) 661-1900
Attorneys for Plaintiff

CYRUS MILANIAN,

Plaintiff,

**SUPERIOR COURT OF NEW JERSEY
ATLANTIC COUNTY
LAW DIVISION**

DOCKET NO: ATL-L-230-03

v.

**CAESARS WORLD, INC. and PARK
PLACE ENTERTAINMENT CORP.,**

Defendants.

**SUMMONS DIRECTED TO
DEFENDANT CAESARS WORLD,
INC.**

STATE OF NEW JERSEY, TO THE DEFENDANT(S) NAMED ABOVE:

CAESARS WORLD, INC.
a/e Corporation Service Company, Registered Agent

The Plaintiff, named above, has filed a lawsuit against you in the Superior Court of New Jersey. The Complaints attached to this Summons state the basis for this lawsuit. If you dispute this Complaint, you or your attorney must file a written Answer or motion and Proof of Service with the Deputy Clerk of the Superior Court in the County listed above within 35 days from the date you receive this Summons, not counting the date you received it. (The address of each deputy clerk of the Superior Court is attached hereto). If the Complaint is one in Newark, then you must file your written Answer or motion and Proof of Service with the Clerk of the Superior Court, Hughes Justice Complex, CN-871, Trenton, NJ 08625. A filing fee payable to the Clerk of the Superior Court and a completed Case Information Statement (available from the deputy clerk of the Superior Court) must accompany your Answer or motion when it is filed. You must also send a copy of your Answer or motion to Plaintiff's attorney whose name and address appear above, or to Plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file and serve a written Answer or motion (with fee of \$125.00

and completed Case Information Statement) if you want the court to hear your defense.

If you do not file and serve a written Answer or motion within 15 days, the court may enter a judgment against you for the relief plaintiff demands, plus interest and costs of suit. If judgment is entered against you, the Sheriff may seize your money, wages or property to pay all or part of the judgment.

If you cannot afford an attorney, you may call the Legal Services office in the county where you live. A list of these offices is provided. If you do not have an attorney and are not eligible for free legal assistance, you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A list of these numbers is also provided.

FLASTER/GREENBERG P.C.

[Signature]
Kenneth S. Goodkind, Esquire
Attorney for Plaintiff

[Signature]
Donald F. Phelan
Clerk of the Superior Court

Dated: February 11, 2002

Name of Defendant(s) to be served: **Caesars World, Inc.**
Address for service: **c/o Corporation Service Company, Registered Agent
830 Barr Tavern Road
West Trenton, NJ 08628**

Corporation Service Company
2711 Centerville Road Suite 400, Wilmington, DE, 19808
(302) 636-5400

The Premier-Hall Corporation System, Inc.

United States Corporation Company

NOTICE OF SERVICE OF PROCESS

Date Processed: 27-FEB-03

Transmitted A: NY1662592C

ALL

Reflected back to:

To: BERNARD E. DELUKY, JR.
PARK PLACE ENTERTAINMENT
BOARDWALK AND PARK PLACE
ATLANTIC CITY NJ 08401

TYPE OF REPRESENTATION: Summary

We enclose the following documents which were served upon:
as registered agent in New Jersey Corporation Service Company
for
Documents were served on 27-FEB-03 CAESARS WORLD, INC. (ID#: 1988179)
via Personal Service ID#: N/A

Case # ATL-L-280-03

Title of Action: CYRUS MILANIAN
vs. CAESARS WORLD, INC. ET AL.
Court: SUPERIOR COURT OF NJ ATLANTIC COUNTY LAW DIVISION
Nature of Case: Contract

☒ Summons
☒ Complaint
☐ Certificate
☐ Subpoena

☐ Notice of Mechanic's Lien
☐ Notice of Attorney's Lien
☐ Notice of Default Judgment

☐ A self-addressed stamped envelope enclosed
☐ Duplicate copies of the Notice and Acknowledgment enclosed

Other:

Answer Due: WITHIN 35 DAYS OF SERVICE
Documents Sent: Federal Express ID#:
Call if Please: No call please Spoke to: N/A
Comments: N/A

Attorney for Claimants
KENNETH S. GOODKIND, ESQ.
PLASTER/GOODKIND, P.C.
1810 CHAPPEL AVENUE WEST
CHERRY HILL, NJ 08002
656-661-1900

Form Prepared By: Joanne Wasowicz

Please acknowledge receipt of this notice and the enclosed by signing and returning the acknowledgment copy.

Original Case Copy - for your records

The information on this transmittal is provided for use in forwarding the enclosed documents. This information does not constitute a legal opinion as to the facts or details of this action. Those should be obtained from the documents themselves. The receiver of this transmittal is responsible for inspecting the documents and for making appropriate action. If you have received only a copy of the transmittal, you should be aware that the documents have been sent to the original addressee. You should contact that addressee for details or interpretation of the content of these documents.

BF (5467)

PITNEY, HARDIN, KIPP & SZUCH LLP

(MAIL TO) P.O. BOX 1945, MORRISTOWN, N.J. 07962-1945
(DELIVERY TO) 200 CAMPUS DRIVE, FLORHAM PARK, N.J. 07932-0950
(973) 966-6300

ATTORNEYS FOR DEFENDANTS
Caesars World, Inc. and Park Place
Entertainment Corporation

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

CYRUS MILANIAN,

HONORABLE

Plaintiff,

Civil Action No.

v.

:

CAESARS WORLD, INC. and PARK
PLACE ENTERTAINMENT CORP.,

:

CERTIFICATION OF SERVICE
AND OF FILING
OF NOTICE OF REMOVAL

:

Defendants.

:

BRIAN G. FRIEL, of full age, hereby certifies as
follows:

1. I am an attorney-at-law of the State of New Jersey
and am associated with the firm of Pitney, Hardin, Kipp & Szuch

LLP, attorneys for defendants Caesars World, Inc. and Park Place Entertainment Corp. in the above-captioned matter.

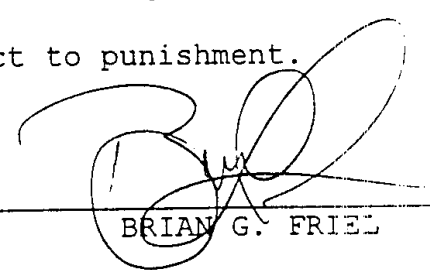
2. On March 18, 2003, I caused a Notice of Removal of this matter to be forwarded for filing with the Clerk of the United States District Court for the District of New Jersey.

3. On March 18, 2003, I caused to be forwarded for filing with the Clerk of the Superior Court, Law Division, Atlantic County, in Atlantic City, New Jersey a Notice of Filing of the Notice of Removal in the United States District Court of the District of New Jersey.

4. On March 18, 2003, I caused to be served upon all counsel and parties of record a copy of the Notice of Removal and the Notice of Filing of the Notice of Removal by sending copies by UPS Next Day Air addressed as follows:

Kenneth S. Goodkind, Esq.
Flaster, Greenberg, P.C.
1810 Chapel Avenue West, 3rd Fl.
Cherry Hill, New Jersey 08002-4609

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me is willfully false, I am subject to punishment.



BRIAN G. FRIEL

Dated: March 18, 2003

**NEW JERSEY CASINO INDUSTRY
EMPLOYMENT STATISTICS
FOR THE FOUR YEARS ENDED DECEMBER 31, 2001**

	2001	2000	1999	1998
<i>AC Hilton</i>	3,337	3,389	3,285	3,384
<i>Bally's Park Place</i>	5,636	5,611	5,393	5,474
<i>Caesars</i>	4,646	4,432	4,474	4,690
<i>Claridge</i>	2,282	2,379	2,379	2,471
<i>Harrah's</i>	3,172	3,550	3,461	3,478
<i>Resorts</i>	3,151	3,038	3,185	3,197
<i>Sands</i>	3,005	3,079	3,069	3,039
<i>Showboat</i>	3,129	3,194	3,278	3,345
<i>Tropicana</i>	4,958	5,181	5,141	5,078
<i>Trump Marina</i>	3,109	3,484	3,428	3,473
<i>Trump Plaza</i>	3,561	3,929	4,323	5,199
<i>Trump Taj Mahal</i>	5,606	6,160	5,950	5,714
TOTALS	45,592	47,426	47,366	48,542

**NEW JERSEY CASINO INDUSTRY
SALARIES AND WAGES
FOR THE FOUR YEARS ENDED DECEMBER 31, 2001
(\$ IN THOUSANDS)**

	2001	2000	1999	1998
<i>AC Hilton</i>	\$84,680	83,075	\$71,314	\$72,008
<i>Bally's Park Place</i>	137,382	136,494	115,046	112,598
<i>Caesars</i>	112,041	111,013	112,405	110,361
<i>Claridge</i>	58,031	54,195	55,094	55,698
<i>Harrah's</i>	82,397	87,186	85,829	84,382
<i>Resorts</i>	71,659	73,600	73,248	75,309
<i>Sands</i>	70,333	69,238	69,034	66,086
<i>Showboat</i>	79,736	80,610	81,750	84,821
<i>Tropicana</i>	102,505	103,539	99,189	96,716
<i>Trump Marina</i>	77,403	78,744	78,655	77,278
<i>Trump Plaza</i>	89,182	91,170	101,166	106,797
<i>Trump Taj Mahal</i>	136,438	138,240	138,645	133,538
TOTALS	\$1,101,787	1,107,104	\$1,081,375	\$1,075,592

EXHIBIT **B**

File

MELVIN K. SILVERMAN (MS5178)
MELVIN K. SILVERMAN & ASSOC.
mks@powerlaw.net
One Gateway Center,
Suite 2600
Newark, NJ 07102
Phone: (973) 645-9494
attorneys for Plaintiff Cyrus Milanian

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

CYRUS MILANIAN

Plaintiff

v.

CAESARS WORLD, INC., and PARK
PLACE ENTERTAINMENT CORP.

Defendants.

Civil Action No. 03-1259

U.S. District Court Judge Wolfson

NOTICE OF APPEARANCE

THE CLERK OF COURT will please note my appearance as counsel for the
above-named Plaintiff, CYRUS MILANIAN.

Dated this 7 day of April, 2003.

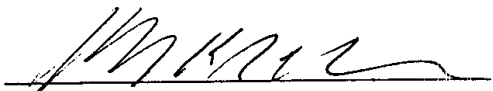
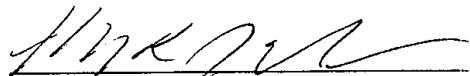

Melvin K. Silverman, (MS5178)
mks@powerlaw.net
MELVIN K. SILVERMAN & ASSOC.
One Gateway Center,
Suite 2600
Newark, NJ 07102
Phone: (973) 645-9494

EXHIBIT **D**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been delivered by facsimile and U.S. Mail to: RICHARD H. BROWN, of PITNEY, HARDIN, KIPP & SZUCH LLP, attorneys for petitioners Caesars World, Inc., and Park Place Entertainment Corporation, at (973) 966-1550, and P.O. Box 1945, Morristown, New Jersey 07962-1945 respectfully.


Melvin K. Silverman (MS5178)

MELVIN K. SILVERMAN (MS5178)
MELVIN K. SILVERMAN & ASSOC.
mks@powerlaw.net
One Gateway Center,
Suite 2600
Newark, NJ 07102
Phone: (973) 645-9494
attorneys for Plaintiff Cyrus Milanian

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

CYRUS MILANIAN

Plaintiff

v.

CAESARS WORLD, INC., and PARK
PLACE ENTERTAINMENT CORP.

Defendants.

Honorable Freda L. Wolfson

Civil Action No. 03-1259

**PLAINTIFF'S OBJECTION TO
DEFENDANTS' PETITION FOR
REMOVAL, MOTION FOR REMAND**

COMES NOW, Plaintiff CYRUS MILANIAN (hereinafter "Plaintiff"), by and through his undersigned counsel, and pursuant to 28 U.S.C. § 1447(c), and hereby files this, his Objection to Defendant's Petition for Removal, and moves this Honorable Court to remand this cause back to the Superior Court of New Jersey, Law Division, Atlantic County, and as grounds therefor states:

STATEMENT OF FACTS:

On or about January 27, 2003, Plaintiff filed its seven (7) count complaint against Defendants for Theft of Trade Secrets, Idea Misappropriation, Breach of Express Contract, Breach of Implied Contract, Breach of Confidential Relationship, Misrepresentation, and Detrimental Reliance, in the Superior Court of New Jersey Law, Division, Atlantic County, New Jersey which was assigned Case Number CACE ATL-L-230-03. On March 18, 2003, Defendant filed an Notice of Filing Notice of and Petition for Removal under 28 U.S.C. § 1446(a), which, states that "the amount in controversy

EXHIBIT " E "

exceeds the sum or value of \$75,000.00, exclusive of interest and costs. (Def. Notice of Removal ¶ 4). However, Plaintiff's complaint, on its face, does not contain any allegations sufficient to satisfy the requisite jurisdictional amount for diversity jurisdiction under 28 U.S.C.1332 (a). Defendants go on to argue that simply by seeking "compensatory damages, consequential damages, exemplary damages, disgorgement of profits, attorney's fees and costs of suit" Plaintiff's damages must exceed the jurisdictional amount, however Defendants have not produced any evidence as to the source of its calculated damages, nor an affidavit to support its allegation.

I. DEFENDANTS MUST PROVE THE EXISTENCE OF THE PREREQUISITES TO INVOKE THIS COURTS JURISDICTION

As the party invoking federal jurisdiction, the Defendants must prove the existence of the prerequisites of this jurisdiction. *Boyer v. Snap-On Tools Corp.*, 913 F.2d 108, 111 (3d Cir. 1990). If diversity of citizenship constitutes the basis of removal jurisdiction, the Defendants must establish that the amount in controversy exceeds \$75,000.00. *Meritcare Inc. v. St. Paul Mercury Ins. Co.*, 166 F.3d 214, 222 (3d Cir. 1999) ("The burden of establishing the amount in controversy in removal cases rests on the defendant." (citing *Abels v. State Farm Fire & Cas. Co.*, 770 F.2d 26, 29 (3d Cir. 1985))). Defendants must prove the requisite jurisdiction by a preponderance of the evidence. *Penn v. Wal-Mart Stores, Inc.*, 116 F.Supp.2d 557 (D.N.J.,2000).

II. ON ITS FACE, PLAINTIFF'S COMPLAINT DOES NOT ALLEGE FACTS SUFFICIENT TO MEET THE JURISDICTIONAL AMOUNT OF THE U.S. COURTS. REMAND IS THEREFORE NECESSITATED.

Federal courts are courts of limited jurisdiction, and a lack of federal subject matter jurisdiction cannot be waived. *Tobin v. U.S.*, 170 F.Supp.2d 472, (D.N.J.,2001). The purpose of the removal statute is to restrict and limit removal jurisdiction; therefore the statute is to be construed narrowly and any doubt should be resolved against removal jurisdiction. *American Fire and Cas.*

Co., v. Finn, 341 U.S. 6 (1951). See, e.g., *Boyer v. Snap-On Tools Corp.*, 913 F.2d 108, 111 (3d Cir. 1990); *Carroll v. United Air Lines, Inc.*, 7 F. Supp. 2d 516, 519 (D.N.J. 1998) (quoting *Boyer*, 913 F.2d at 111).

It is clear and accepted without question that “[i]f [the Plaintiff] does not desire to try his case in the federal court, he may resort to the expedient of suing for less than the jurisdictional amount, and though he would be justly entitled to more, the defendant cannot remove.” *St. Paul Mercury Indemnity Co. v. Red Cab Co.*, 303 U.S. 283, 58 S.Ct. 586, (1938). While the Defendants do have a right, given by statute, to remove in certain situations, Plaintiff is still the master of his own claim. see, *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 391 & n. 7, 107 S.Ct. 2425, 2429 & n. 7, 96 L.Ed.2d 318 (1987); *Great Northern R. Co. v. Alexander*, 246 U.S. 276, 282, 38 S.Ct. 237, 239, 62 L.Ed. 713 (1918); see generally, Wright & Miller, 14A Federal Practice and Procedure §§ 3702 (“[p]laintiff is the master of his or her own claim.”); see also, *St. Paul's*, 303 U.S. at 294, 58 S.Ct. at 592. Defendant's right to remove and Plaintiff's right to choose his forum are not on equal footing. Unlike the rules applied when Plaintiff has filed suit in federal court with a claim that, on its face, satisfies the jurisdictional amount, removal statutes are construed narrowly. *Boyer v. Snap-on Tools Corp.*, 913 F.2d 108 (3rd Cir.1990), cert. denied, 498 U.S. 1085, 111 S.Ct. 959, 112 L.Ed.2d 1046 (1991). Where Plaintiff and Defendants clash about jurisdiction, uncertainties are resolved in favor of remand. *Id.*

This Court must look to the Plaintiff's state court pleading, and not Defendant's Notice of Removal, to determine whether the Complaint can be removed. *Vartanian v. Terzian*, 960 F. Supp. 58 (D.N.J. 1997); *Martin v. Wilkes-Barre Pub. Co.*, 567 F.Supp. 304 (M.D.Pa.1983), (Stating that Plaintiff's state court pleadings control removability). *Zimmerman v. Conrail*, 550 F.Supp. 84 (S.D.N.Y.1982). The Defendants' petition for removal cannot supply the missing elements required

to establish federal jurisdiction. *Irving Trust Co. v. Century Export & Import, S.A.*, 464 F.Supp. 1232 (S.D.N.Y.1979); *Leslie v. BancTec Service Corp.*, 928 F.Supp. 341 (S.D.N.Y.1996); *Dow v. Jones*, 2002 WL 31155609 (D.Md.2002). In this case, Plaintiff's complaint does not allege any jurisdictional amount.

If the *ad damnum* clause of the Complaint had included a demand for specific amount of damages which was less than jurisdictional amount in controversy, Defendant would be required to prove to legal certainty that Plaintiff could not recover below the jurisdictional amount, *even if Plaintiff seeks both compensatory and punitive damages*. *McGhee v. Allstate Indem. Co.*, 928 F.Supp. 1102, (M.D.Ala.1996).

Finally, a complaint is fatally defective, as far as diversity jurisdiction is concerned, unless it contains a proper allegation of the amount in controversy. *Bassett v. Toyota Motor Credit Corp.*, 818 F.Supp. 1462, (S.D.Ala.1993). Since the complaint does not contain an allegation regarding the amount in controversy, the case must be remanded. Herein, the only allegation concerning the amount of damages sought by Plaintiff are concerned with the type of damages, rather than an amount.¹ (A copy of the Complaint is attached hereto as **Exhibit "A"**). There are no other allegations on the face of the complaint regarding damages. Therefore, no jurisdiction exists on the face of Plaintiff's Complaint. As such, this cause should necessarily be remanded back to the Superior Court of New Jersey Law Division, Atlantic County, for want of subject matter jurisdiction.

III. ABSENT EVIDENCE OF DEFENDANTS' PROFITS, THERE CAN BE NO DETERMINATION OF OF THE ACTUAL AMOUNT OF PLAINTIFF'S CLAIM.

In this case, the only allegations regarding the amount of damages were made by the

¹ The complaint requests compensatory damages, consequential damages, exemplary damages, disgorgement of profits, attorneys fees and costs, but does not state an amount of damages.

Defendants in their Petition for Removal. (Def. Notice of Removal ¶ 4). However, Defendants did not submit any evidence on the matter. In the typical removal case, a Plaintiff files suit in state court seeking an amount in excess of the jurisdictional amount for diversity. The Defendants can then remove to the case to federal court if he can show, by a preponderance of the evidence, facts supporting jurisdiction. *McNutt v. General Motors Acceptance Corp.*, 298 U.S. 178, 189, 56 S.Ct. 780, 785, 80 L.Ed. 1135 (1936). The applicable opinions indicate that the Defendants' burden of proof in this regard must be a heavy one. *Winters Gov't Securities Corp.*, *supra* at 242; *see also*, *Burns v. Windsor Ins. Co.*, 31 F.3d 1092, 1095 (11th Cir. 1994); *Boyer*, *supra* at 110-112. These standards give great weight to Plaintiff's assessment of the value of his case. *Burns*, *supra* at 1095. Thus, a Plaintiff who artfully pleaded his claim could avoid federal jurisdiction. *Id.*

Because of the nature of this suit, damages are difficult to ascertain, and calculate. Plaintiff anticipates hiring a damages expert to determine the amount of damages. Plaintiff, at this time, has no way to ascertain the amount of damages without engaging in discovery. Currently, there exists no evidence in the record whatsoever that Plaintiff's claims are in excess of the jurisdictional amount.

IV. DEFENDANTS WERE PROPERLY JOINED.

Defendants have alleged that Plaintiff's only joined Park Place Entertainment, Inc., ("PPE") in order to avoid diversity. (Def. Notice of Removal ¶ 13). In fact, Plaintiff has just reasons for including PPE as a Defendant. Paragraphs 12 and 14 of the Complaint allege that both CWI, and PPE are making use of Plaintiff's trade secrets. In addition PPE owns the various properties where Plaintiff's trade secrets are being used, and the principal agent relationship, if any, of the Defendants is not yet known.

V. DEFENDANTS PPE AND CWI HAVE THEIR PRINCIPAL PLACE OF

BUSINESS IN NEW JERSEY

The Third Circuit gave meaning to the phrase “principal place of business” in *Kelly v. United States Steel Corp.*, 284 F.2d 850 (3d Cir.1960), concluding that “corporate activities” determine the corporation's principal place of business. *Kelly*, 284 F.2d at 854. PPE's owns properties in the second largest gaming market in the United States, namely New Jersey. (Page 1 of PPE's 2001 Annual Report attached hereto as **Exhibit “B”**). For the year 2001, PPE employed in excess of 15,000 people in New Jersey alone.² (Page 24 of New Jersey Casino Control Commission Annual Report for the year 2001 attached hereto as **Exhibit “C”**). In addition the Article 6 § 5:12-82(d) of the New Jersey Casino Control Act (NJSA § 5:12-82(d)) provides:

- d. No corporation shall be eligible to apply for a casino license unless:
 - (1) The *corporation shall be incorporated in the State of New Jersey*, although such corporation may be a wholly or partially owned subsidiary of a corporation which is organized pursuant to the laws of another state of the United States or of a foreign country;
 - (2) The corporation shall maintain an office of the corporation in the casino hotel licensed or to be licensed;
 - (3) The corporation shall comply with all the requirements of the laws of the State of New Jersey pertaining to corporations;
 - (4) The corporation shall maintain a ledger *in the principal office of the corporation in New Jersey* which shall at all times reflect the current ownership of every class of security issued by the corporation and shall be available for inspection by the commission or the division and authorized agents of the commission and the division at all reasonable times without notice;

Defendants work in conjunction to operate several gaming establishments, as well as hotels, in New Jersey. Defendants PPE and CAESARS both have their principal office in New Jersey, as mandated by their licensing requirements.


²PPE owns and manages the Atlantic City Hilton, Bally's Park Place, Caesars and the Claridge

CONCLUSION

The Defendants have their principal place of business in New Jersey, and so no diversity of citizenship exists. In addition, Plaintiff has not fraudulently joined PPE in order to defeat diversity. Furthermore, there is nothing, within the four corners of the complaint, which would suggest an amount of damages. Since the Complaint does not state grounds for removal, *on its face*, the Defendants' are not entitled to remove the case, and this Court must decline to exercise diversity jurisdiction over this claim and remand the same to the Superior Court of New Jersey Law Division, Atlantic County pursuant to the rationale set forth in Sections I-V, *supra*

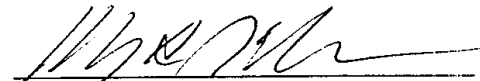
WHEREFORE, Plaintiff respectfully requests that this Court decline to exercise diversity jurisdiction over this claim and remand the same to the Superior Court of New Jersey Law Division, Atlantic County.

Dated this 17th, day of April, 2003.


Melvin K. Silverman (MS5178)
mks@powerlaw.net
MELVIN K. SILVERMAN & ASSOC.
One Gateway Center,
Suite 2600
Newark, NJ 07102
Phone: (973) 645-9494

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been delivered by facsimile and U.S. Mail to: RICHARD H. BROWN, of PITNEY, HARDIN, KIPP & SZUCH LLP, attorneys for petitioners Caesars World, Inc., and Park Place Entertainment Corporation, at (973) 966-1550, and P.O. Box 1945, Morristown, New Jersey 07962-1945 respectfully.


Melvin K. Silverman (MS5178)

CERTIFICATION PURSUANT TO L. CIV. R. 11.2

I certify that there is an action pending in the United States District Court for the District of Nevada bearing the caption, Caesars World, Inc. and Park Place Entertainment Corporation v. Cyrus Milanian and the New Las Vegas Development Company, LLC, Case No. S-02-1287-RLH (RJJ). However, the matter in controversy is not the subject of the pending action in Nevada. A final judgment has been entered in the pending action in Nevada, but the Plaintiff, Cyrus Milanian has filed a post-trial motion.

Dated this 17th, day of April, 2003

MELVIN K. SILVERMAN & ASSOC.
attorneys for Plaintiff Cyrus Milanian

By: _____
Melvin K. Silverman (MS5178)

RECEIVED 223
FILED

MAY 27 2003

ATLANTIC COUNTY
LAW DIVISION

FLASTER/GREENBERG P.C.
Commerce Center
1810 Chapel Avenue West, 3rd Floor
Cherry Hill, New Jersey 08002-4609
Phone: (856) 661-1908
Attorneys for Plaintiff

CYRUS MILANIAN

Plaintiff

vs.

CAESARS WORLD, INC. and PARK
PLACE ENTERTAINMENT CORP.

Defendants

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
ATLANTIC COUNTY
DOCKET NO.:

Civil Action

COMPLAINT

CYRUS MILANIAN, by and through his undersigned attorneys, by way of Complaint in this action hereby says:

1. Plaintiff, Cyrus Milanian ("Milanian" or "Plaintiff"), is an individual who resides in Jersey City, Hudson County, New Jersey.
2. Caesars World, Inc. ("CW") is a corporation organized and existing under the laws of the State of Florida, and has an office and principal place of business in Atlantic City, New Jersey.
3. Park Place Entertainment Corp. ("PP") is a corporation organized and existing under the laws of the State of Delaware, having an office and principal place of business in Atlantic City, New Jersey.
4. CW is a wholly owned subsidiary of PP.
5. On or about May 12, 1996, Milanian submitted an eight-page outline of a confidential business plan entitled the "Milanian Project" to CW in Las Vegas, Nevada.

EXHIBIT A

CERTIFICATION PURSUANT TO RULE 4:5-1

Pursuant to the provisions of Rule 4:5-1, I hereby certify as follows:

1. Except as stated below, the matter in controversy is not the subject of any other pending action in any other court or of a pending arbitration proceeding in this jurisdiction.

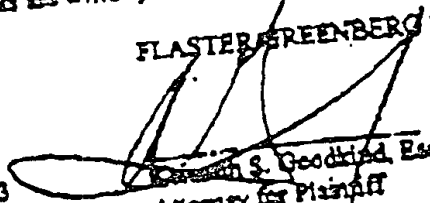
2. A related action has been pending in the U.S. District Court in the District of Nevada between these parties captioned as *Casino World, Inc. and Park Place Entertainment Corporation v. Cyrus Milanese and The New Las Vegas Development Corp., LLC*, CV-S-02-1287-RLH-RLL.

3. It is contemplated that the matter in controversy will not become the subject of any other action in any court or of a pending arbitration proceeding.

4. Plaintiff is not aware of any other party that needs to be joined in this proceeding. I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.

FLASTER GREENBERG P.C.

Dated: January 24, 2003

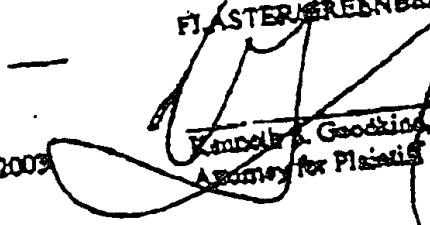

Kenneth S. Goodkind, Esquire
Attorney for Plaintiff

DESIGNATION OF TRIAL COUNSEL

Kenneth S. Goodkind, Esquire is hereby designated as trial counsel for Plaintiff.

FLASTER GREENBERG P.C.

Dated: January 24, 2003


Kenneth S. Goodkind, Esquire
Attorney for Plaintiff

6. The Meriania Project included a sub-project for the construction of a replica of the ancient Coliseum of Rome and the integration thereof into the Caesar's Palace property of CW in Las Vegas, Nevada.

7. The replica Coliseum was to include an entertainment complex including restaurants, theatres, shops and special events.

8. The above Plaintiff's business plan was novel.

9. By letter dated August 12, 1996, CW declined to further consider the Meriania Project and acknowledged the confidentiality of Plaintiff's submission.

10. By a certificate dated August 14, 1996, David Mitchell, a vice president of CW, confirmed receipt of the Meriania Project submission, advised Plaintiff that CW had no interest therein "at this time" and further confirmed that the submission was confidential.

11. David Mitchell's certificate of August 14, 1996 was notarized by the general counsel of CW.

12. In April 2001, CW and PP announced the construction of a replica of the Coliseum of Rome as an extension of their property in Las Vegas, and the use thereof as an entertainment and convention venue, which is presently scheduled to open in March 2003.

13. The construction of the replica detailed in the preceding paragraph was identical to the idea previously presented by Plaintiff.

14. Despite the fact that Plaintiff had presented the idea of constructing a replica of the Coliseum of Rome as an extension of the CW and PP property in Las Vegas, Defendants failed to provide Plaintiff with any credit, recognition, compensation or remuneration in any form.

COUNT I
THEFT OF TRADE SECRETS

15. The preceding paragraphs are incorporated herein by reference as if set forth at length.
16. Plaintiff's confidential submissions, containing his ideas, concepts, market research, business plans, contacts and other information related to the Martania Project to Defendants, offered numerous advantages over other entertainment venues.
17. At the time of Plaintiff's presentation and confidential disclosure to the Defendants, there was no such tourist attraction in the Las Vegas area or anywhere in the United States directed to Rome's Coliseum.
18. Prior to the disclosure of the Plaintiff's new concepts and plans in connection with the Martania Project to Defendants, there did not exist an entertainment complex replicating Rome's Coliseum and including restaurants, theaters, shops and special events.
19. Plaintiff's ideas, plans, market research, contact information, concepts, and presentations, which Plaintiff submitted to Defendants and their agents, constituted valuable trade secrets of Plaintiff, contemplated for use by, and with, his businesses, and having great commercial value to Defendants.
20. Plaintiff's trade secrets taught Defendants, in business and legal terms, expressions, methods and means of implementation of Plaintiff's ideas, plans, market research, contact information and concepts disclosed to Defendants.
21. Such trade secrets were not theretofore known to Defendants or otherwise known to the public, and could not be independently obtained or derived by Defendants by proper, lawful means.

22. Plaintiff, at all times, undertook reasonable efforts under the circumstances to maintain the secrecy and confidentiality of his trade secrets and of all disclosures he made to Defendants and their agents, which disclosures were all made in confidence.

23. Plaintiff's trade secrets were thereby sufficiently secret, and derived economic value from the fact that they were not known to the public, including Defendants, who could, did, and continue to obtain independent economic value from their disclosure and use.

24. Plaintiff's trade secrets thereby provided to Defendants an advantage, and/or an opportunity to obtain an advantage, that they would not otherwise have had.

25. Defendants, using improper means, knowingly misappropriated Plaintiff's trade secrets with willful and malicious intent to deprive Plaintiff of his intellectual property and of rights held therein by making unauthorized uses and disclosures of Plaintiff's trade secrets.

26. Defendants thereby willfully and maliciously misappropriated Plaintiff's trade secrets, to the detriment of Plaintiff.

27. Plaintiff has been greatly damaged by Defendants' misappropriation of his trade secrets and Defendants have been unjustly enriched.

WHEREFORE, Plaintiff demands judgment in his favor against Defendants for compensatory damages, consequential damages, exemplary damages, attorneys fees and costs, disgorgement of profits and any such other relief as this Court deems just and appropriate.

COUNT II IDEA MISAPPROPRIATION

28. The preceding paragraphs are incorporated herein by reference as if set forth at length.

29. Defendants herein misappropriated Plaintiff's idea for the construction of a replica of the Colosseum of Rome, and made use of Plaintiff's idea for their own benefit.

30. Defendants were aided in the development of their own concepts and products by the misappropriation of Plaintiff's ideas.

30. Plaintiff's idea was novel at the time that it was presented to Defendants.

31. Plaintiff's idea was also disclosed in confidence, as the Defendants themselves have admitted and certified.

32. As a direct and proximate result of Defendant's actions, Plaintiff has sustained substantial damages.

WHEREFORE, Plaintiff demands judgment in his favor against Defendants for compensatory damages, consequential damages, exemplary damages, attorneys fees and costs, disgorgement of profits and any such other relief as this Court deems just and appropriate.

COUNT III BREACH OF EXPRESS CONTRACT

33. The preceding paragraphs are incorporated herein by reference as if set forth at length.

34. Defendants expressly agreed that the Marlanis Project, as well as the information submitted by Plaintiff, was confidential and would be kept confidential.

35. By agreeing, in writing, to maintain the confidentiality of Plaintiff's Marlanis Project, an express contract arose between the parties.

36. Defendants agreed that they would not utilize Plaintiff's information unless authorized to do so. _____

37. Defendants used Plaintiff's Marlanis Project, including trade secrets and proprietary rights, in conscious disregard of their duty to obtain Plaintiff's permission to do so.

38. Defendants are in breach of the contract.

39. Plaintiff has not received legal or equitable consideration under this contract commensurate to the value of the consideration Defendants received from Plaintiff.

40. Plaintiff has suffered, and continues to suffer, harm as a direct and proximate result of such breach including, but not limited to, economic harm.

41. These acts and omissions of Defendants constituted a material breach of its contract with Plaintiff thereby causing him to suffer irreparable harm.

WHEREFORE, Plaintiff demands judgment in his favor against Defendants for compensatory damages, consequential damages, exemplary damages, attorneys fees and costs, disgorgement of profits and any such other relief as this Court deems just and appropriate.

COUNT IV BREACH OF IMPLIED CONTRACT

42. The preceding paragraphs are incorporated herein by reference as if set forth at length.

43. Defendants freely, knowingly and willingly obtained Plaintiff's confidential proprietary information and materials described herein pursuant to an understanding that, and under conditions that, they were not to be used without Plaintiff's prior written permission or consent and adequate compensation.

44. As such, an implied contract arose by operation of law between Plaintiff and Defendants.

45. The terms of this contract were that Defendants would compensate Plaintiff if they or their agents disclosed or used or otherwise benefited from any of the ideas, concepts, market research, business plans, contacts and other materials and items of Plaintiff.

46. Defendants did, in fact, knowingly and intentionally use, disclose and otherwise derive benefit from Plaintiff's ideas, concepts, market research, business plans, contacts and other materials and items in conscious disregard of Plaintiff's rights under said implied contract.

47. Plaintiff has not received any equitable or legal consideration under said implied contract.

48. Defendants have thereby been unjustly enriched as a result of their wrongfully acquired gains from Plaintiff to the detriment of Plaintiff.

49. Plaintiff is thereby entitled to restitution for the unjust enrichment of Defendants attendant to their development and use, present and future, of all appropriated ideas, concepts, market research, business plans, contacts and other materials of Plaintiff, as described above.

WHEREFORE, Plaintiff demands judgment in his favor against Defendants for compensatory damages, consequential damages, exemplary damages, attorneys fees and costs, disgorgement of profits and any such other relief as this Court deems just and appropriate.

COUNT IV BREACH OF CONFIDENTIAL RELATIONSHIP

50. The preceding paragraphs are incorporated herein by reference as if set forth at length.

51. A confidential relationship arose and then existed between Plaintiff and Defendants.

52. Defendants, by their acts described herein, knowingly and intentionally breached the express and implied terms of said confidential relationship with the specific intent to profit therefrom.

53. Plaintiff has neither consented to nor authorized the use or disclosure of any of his ideas, concepts, market research, business plans, contacts and other materials and items by anyone, and has otherwise not abandoned same.

54. Plaintiff did not have reason to suspect that such a breach of confidence would occur, during or after the period in which he disclosed his ideas, concepts, market research, business plans, contacts and other materials to Defendants.

55. Defendants were aware that their breach of said confidential relationship helped them to facilitate use of Plaintiff's confidentially disclosed ideas, concepts, market research, business plans, contacts and other materials.

56. Defendants have been unjustly enriched by their breach of this confidential relationship with Plaintiff, this to the detriment of Plaintiff.

WHEREFORE, Plaintiff demands judgment in his favor against Defendants for compensatory damages, consequential damages, exemplary damages, attorneys fees and costs, disgorgement of profits and any such other relief as this Court deems just and appropriate.

COUNT V MISREPRESENTATION

57. The preceding paragraphs are incorporated herein by reference as if set forth at length.

58. If allowed to use Plaintiff's ideas, designs, methods and concepts et al., Defendants had a duty to inform Plaintiff of their intention to use Plaintiff's ideas, designs,

methods and concepts in the construction of a replica of the Coliseum of Rome as an extension of their property in Las Vegas prior to actually doing so.

59. Defendants did not exercise reasonable care in processing Plaintiff's 1996 submissions and did not communicate to Plaintiff their true intentions regarding the Coliseum project.

60. In order to induce Plaintiff to share his confidential proposal, Defendants represented that all information would remain confidential.

61. Milanian relied upon these representations when he disclosed the elements of the Mariani Project to Defendants.

62. These representations were false when made.

63. The Defendants had actual or constructive knowledge of their falsity and/or should have had knowledge that the representations were false.

64. As a proximate result of Defendants' misrepresentations, Plaintiff has suffered substantial damages.

WHEREFORE, Plaintiff demands judgment in his favor against Defendants for compensatory damages, consequential damages, exemplary damages, attorneys fees and costs, disgorgement of profits and any such other relief as this Court deems just and appropriate.

COUNT VI DETRIMENTAL RELIANCE

65. The preceding paragraphs are incorporated herein by reference as if set forth at length.

66. Defendants promised Plaintiff that all information provided would remain confidential.

67. Defendants should have expected that Milanian would rely on the promise.

68. Plaintiff did in fact rely upon this promise, to his substantial detriment.

69. As a direct and proximate result of Defendants' breach, the Plaintiff has suffered substantial damages.

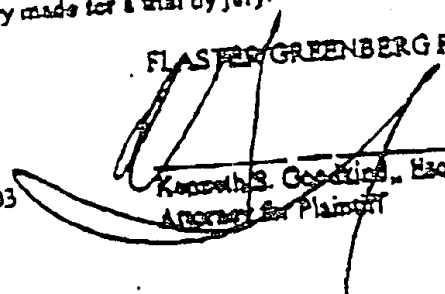
WHEREFORE, Plaintiff demands judgment in his favor against Defendants for compensatory damages, consequential damages, exemplary damages, attorneys fees and costs, disgorgement of profits and any such other relief as this Court deems just and appropriate.

JURY TRIAL DEMAND

Demand is hereby made for a trial by jury.

FLASTER GREENBERG P.C.

Dated: January 24, 2003


Kenneth S. Goodkind Esquire
Attorney for Plaintiff

ORIGINAL

Stephen W. Feingold (SF 2763)
Richard H. Brown (RB 5858)
PITNEY, HARDIN, KIPP & SZUCH LLP
685 Third Avenue
New York, New York 10017-4024
Telephone: (212) 297-5800

Gary R. Goodheart, Esq.
Nevada Bar #1203
JONES VARGAS
3773 Howard Hughes Parkway, Third Floor South
Las Vegas, Nevada 89109
Telephone: (702) 862-3300
Facsimile: (702) 737-7705

Attorneys for Plaintiffs Caesars World, Inc.
and Park Place Entertainment Corporation

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

CAESARS WORLD, INC. and PARK PLACE
ENTERTAINMENT CORPORATION,

Plaintiffs,

v.

CYRUS MILANIAN and THE NEW LAS
VEGAS DEVELOPMENT COMPANY, LLC,

Defendants.

:

: Hon. Roger L. Hunt, U.S.D.J.

: CV-S-02-1287-RLH(RJJ)

:

:

:

:

PLAINTIFFS' OPPOSITION TO DEFENDANT CYRUS MILANIAN'S
MOTION FOR RECONSIDERATION AND ALTERATION OF
JUDGMENT AND PLAINTIFFS' CROSS-MOTION FOR CONTEMPT

77/78
EXHIBIT E

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	ii
PRELIMINARY STATEMENT.....	1
FACTUAL AND PROCEDURAL HISTORY	4
ARGUMENT.....	7
I. MILANIAN HAS NO GROUNDS TO MOVE FOR RECONSIDERATION OR ALTERATION OF THE FEBRUARY 19 TH JUDGMENT	7
II. MILANIAN'S SUBSTANTIVE ARGUMENTS ARE MERITLESS	9
A. This Court Has The Authority To Enjoin Milanian From Filing Compulsory Counterclaims In Any Federal And State Court	9
B. Milanian Waived Whatever Right He Had To A Jury Trial On Plaintiff's Declaratory Judgment Count	14
III. MILANIAN SHOULD BE HELD IN CIVIL CONTEMPT OF COURT	15
CONCLUSION.....	18

TABLE OF AUTHORITIES

		<u>Page</u>
3	<u>Cases</u>	
4	<i>Barber v. Page</i> , 390 U.S. 719 (1968).....	14
5	<i>Brown v. McCormick</i> , 608 F.2d 410 (10 th Cir. 1979)	11
6	<i>Chick Kam Choo v. Exxon Corp.</i> , 486 U.S. 140 (1988)	11
7	<i>Colorado River Water Conservation District v. United States</i> , 424 U.S. 800 (1976).....	10
8	<i>Falstaff Brewing Corporation v. Miller Brewing Company</i> , 702 F.2d 770 (9 th Cir. 1983).....	17
9	<i>Fund for Animals, Inc. v. Lujan</i> , 962 F.2d 1391 (9 th Cir. 1992)	11
10	<i>General Signal Corporation v. Donallco, Inc.</i> , 787 F.2d 1376 (9 th Cir. 1986)	17
11	<i>Hamilton v. Nakai</i> , 453 F.2d 152 (9 th Cir. 1971), <i>cert. denied</i> 406 U.S. 945 (1972)	9
12	<i>Hamilton v. State Farm Fire and Cas. Co.</i> , 270 F.3d 778 (9 th Cir. 2001).....	9
13	<i>Harley-Davidson, Inc. v. Morris</i> , 19 F.3d 142 (3d Cir. 1994)	16
14	<i>Hudson Transit Lines Inc., v. Freund</i> , 509 F.Supp. 1172 (S.D.N.Y. 1981)	18
15	<i>John T. v. The Delaware County Intermediate Unit</i> , 318 F.d 545 (3d Cir. 2003).....	16
16	<i>Kinnear-Weed Corp. v. Humble Oil & Ref. Co.</i> , 441 F.2d 631 (5 th Cir.), <i>cert.</i> <i>denied</i> , 404 U.S. 941 (1971).....	10
17	<i>McCall-Bey v. Frenzen</i> , 777 F.2d 1178 (7 th Cir. 1985).....	10
18	<i>McIntyre v. McIntyre</i> , 771 F.2d 1316 (9 th Cir. 1985).....	10
19	<i>Mt. Graham Red Squirrel v. Madigan</i> , 954 F.2d 1441 (9 th Cir. 1992)	8
20	<i>Nolen v. Hammel Company, Inc.</i> , 56 F.R.D. 361 (D.S.C. 1972).....	11
21	<i>Plaquemines Parish Comm. Council v. United States</i> , 416 F.2d 952 (5 th Cir. 1969).....	10
22	<i>Portland Feminist Women's Health Center v. Advocates For Life, Inc.</i> , 877 F.2d 787 (9 th Cir. 1989).....	16, 17
23	<i>Robin Woods, Inc. v. Woods</i> , 28 F.3d 396 (3d Cir. 1994).....	18
24	<i>Root v. Woolworth</i> , 150 U.S. 401 (1893)	9
25	<i>Scott & Fetzer Co. v. Dile</i> , 643 F.2d 670 (9 th Cir. 1981)	17
26	<i>Seattle Totems Hockey Club, Inc. v. National Hockey League</i> , 652 F.2d 852 (9 th Cir. 1981), <i>cert. denied</i> , 457 U.S. 1105 (1982).....	9, 11

1	<i>Silcox v. United Trucking Service, Inc.</i> , 687 F.2d 853 (6 th Cir. 1982).....	13
2	<i>Suntex Dairy v. Bergland</i> , 591 F.2d 1663 (5 th Cir. 1979).....	10
3	<i>United Sates v. Fisher</i> , 864 F.2d 434 (7 th Cir. 1988)	10
4	<i>United States v. Powers</i> , 629 F.2d 619 (9 th Cir. 1980).....	17
5	<i>United States v. United Mine Workers</i> , 330 U.S. 258 (1947)	17
6	<i>Ward v. Pennsylvania New York Cent. Transp. Co.</i> , 456 F.2d 1046 (2d Cir. 1972).....	10
7	<i>Watkins v. Resorts International Hotel and Casino, Inc.</i> , 591 A.2d 592, 124 N.J. 398 (1991).....	13
8	<i>Wesch v. Folsom</i> , 6 F.3d 1465 (11 th Cir. 1993).....	9, 10
9		
10	<u>Rules and Other Authorities</u>	
11	11 Wright & Miller, <i>Federal Practice & Procedure</i> , §2961 (1973)	10
12	28 U.S.C. §1651.....	10
13	28 U.S.C. §2283.....	3, 10
14	<i>Fed. R. Civ. P.</i> 11.....	9
15	<i>Fed. R. Civ. P.</i> 38(b).....	15
16	<i>Fed. R. Civ. P.</i> 59(e)	1, 2, 7, 8
17	<i>Restatement (Second) of Judgments</i> §19 (1982)	13
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

9
0
1
2
3
4
5
6
7
8

0
1
2
3
4
5
6
7
8

23
24
25
26
27
28

1 this concept in 1996, be deemed compulsory counterclaims and thus waived by Milanian.
2 Plaintiffs' Proposed Findings of Fact and Conclusions of Law, dated January 21, 2003
3 ("Plaintiffs' January 21 Findings") at 28-29, ¶¶32-38. Plaintiffs also stated their intention to
4 seek to amend their Complaint to include a count six for declaratory judgment on any claim
5 arising out of the 1996 events. *Id.* at ¶40-41. In response, Milanian neither objected to the
6 proposed amendment nor complained about losing his right to a jury trial on the new claim.

7 Indeed, Milanian's witness list, prepared and served before the start of the trial, identified
8 four individuals previously affiliated with or employed by CWI that were referenced in the 1996
9 documents on which Milanian now bases the New Jersey Action. *See* New Jersey Complaint
10 ¶¶5-11, which is attached to Milanian's Reconsideration Motion. As a result, Plaintiffs
11 presented evidence at trial to establish their claim for declaratory judgment on what would
12 become the newly added count six. As set forth and explained in their post-trial submissions, a
13 significant part of Plaintiffs' case went to the 1996 issue. Plaintiffs submitted evidence from
14 witnesses, including one who traveled from Montreal, Canada, on those issues. Milanian not
15 only did not object to that evidence when it was offered, but his counsel cross-examined on this
16 area extensively. At no point did Milanian ever argue that he was entitled to have the claim tried
17 to a jury.

18 After the close of evidence on January 23, 2003, Plaintiffs moved formally for leave to
19 amend the Complaint. The Court granted the motion, but reserved on the question of whether
20 there was sufficient evidence to enter judgment on that count. Once again, Milanian said nothing
21 about a right to a jury trial. The Court then specifically directed the parties to submit post-trial
22 briefs as to the merits of the newly added count six. Reporter's Transcript of Court Trial,
23 January 23, 2003 at 473-77. For the third time, Milanian remained silent about any right to a
24 jury trial.

25 In the February 19th Judgment, the Court ruled that Milanian's purported claims in
26 developing the concept of a replica of the ancient Roman Coliseum in 1996 were sufficiently
27 related factually and legally to the subject matter of this action "that such claims should have
28 been asserted as compulsory counterclaims." February 19th Judgment at 52, ¶91. As such, this

1 Court held that “Milanian’s failure to assert claims related to the 1996 events as compulsory
2 counterclaims in this action means that he has waived them.” *Id.* at 53, ¶92. In order to
3 necessarily provide finality to this ruling, the Court specifically enjoined Milanian from bringing
4 these compulsory counterclaims in any subsequent federal or state court action. *Id.* at 53, ¶93,
5 60, ¶120.

6 While recognizing that this holding made the amended count six moot, as an alternative
7 basis for the relief granted, the Court also entered judgment in favor of Plaintiffs on the amended
8 count six, finding that Plaintiffs’ development of The Colosseum breached no duty, in either
9 contract or tort, to Milanian arising out of any events in 1996. *Id.* at 59, ¶11.

10 On January 27, 2003, more than two weeks before filing his post-trial brief, Milanian
11 filed a complaint in the Superior Court of New Jersey, *Cyrus Milanian v. Caesars World, Inc.*
12 *and Park Place Entertainment Corp.* In that complaint, Milanian asserts claim for: (1) theft of
13 trade secrets; (2) idea misappropriation; (3) breach of express contract; (4) breach of implied
14 contract; (5) breach of confidential relationship; (6) misrepresentation; and (7) detrimental
15 reliance. All of these counts are predicated upon Milanian’s factual claims of developing the
16 concept of the replica of The Colosseum in 1996 and presenting it to CWI. *See New Jersey*
17 *complaint ¶¶5-14.*

18 Milanian did not serve Plaintiffs with a summons and complaint in the New Jersey action
19 until February 27, 2003. On March 4, 2003, Plaintiffs’ counsel, Stephen Feingold, contacted
20 Milanian’s New Jersey counsel, Kenneth Goodkind, to discuss the New Jersey Action. Affidavit
21 of Stephen W. Feingold in Support of Plaintiffs’ Opposition and Cross-Motion for Contempt
22 (“Feingold Aff.”) at ¶4. On that call, Mr. Goodkind advised that he had only received that day a
23 copy of the February 19th Judgment. *Id.* Mr. Feingold told Mr. Goodkind that absent immediate
24 resolution of Milanian’s New Jersey Action (*i.e.*, voluntary dismissal by Milanian), Plaintiffs
25 would seek contempt charges. *Id.* Milanian filed the Reconsideration Motion in this Court two
26 days later.

27 ARGUMENT

1 Milanian's filing of the New Jersey action highlights the correctness of the Court's
2 decision to issue an injunction and award judgment to Plaintiffs on the new count six in the
3 Amended Complaint. The Court should reject Milanian's motion for the reasons outlined below
4 and order the contempt sanctions requested by Plaintiffs. If Milanian disputes the February 19th
5 Judgment, he is entitled to appeal to the Ninth Circuit. He may not, however, obtain a "second
6 bite of the apple" in a New Jersey state court.

7 **I. MILANIAN HAS NO GROUNDS TO MOVE FOR RECONSIDERATION**
8 **OR ALTERATION OF THE FEBRUARY 19TH JUDGMENT.**

9 Although Milanian does not specify the rule upon which he moves for reconsideration
10 and alteration, the only basis for such a motion is *Fed. R. Civ. P. 59(e)*. That rule establishes that
11 in order to alter or amend a court's judgment, a party must show exceptional circumstances
12 justifying such relief. A party may move under *Rule 59(e)* only if "the district court is presented
13 with newly discovered evidence, committed clear error, or if there is an intervening change in the
14 controlling law." *389 Orange St. Partners v. Arnold*, 179 F.3d 656, 665 (9th Cir. 1999); *see also*
15 *Mt. Graham Red Squirrel v. Madigan*, 954 F.2d 1441, 1463 (9th Cir. 1992) (relief under *Rule*
16 *59(e)* also for fraud). A party cannot raise arguments or evidence that was available to it, but that
17 it did not present at trial. *Cf. Lyons v. Jefferson Bank & Trust*, 954 F.2d 716, 728 (10th Cir. 1993)
18 ("If a party, through negligence or a tactical decision, fails to present evidence that was available,
19 it may not find refuge. . . .").

20 Milanian cannot allege any of those necessary predicates for relief under *Rule 59(e)*
21 because none of them exist. The Reconsideration Motion contains no new evidence or any legal
22 arguments that were not available to him when he tried this matter or filed his post-trial papers.
23 The Court's February 19 Judgment is based on sound, accurate analysis of the facts and the law.
24 Milanian's failure to establish any of the prerequisites grants this Court the authority to reject
25 Milanian's motion without considering the substantive arguments.

26 Indeed, the only fraud in this case is the one Milanian has committed by not telling the
27 Court about the New Jersey Action in his post-trial submissions. Milanian made the following
28 arguments in his post-trial submissions:

- 1 • [E]ven putting aside Rule 11 and the criteria for bringing a proper claim in
2 federal court, the 1996 letters do not begin to articulate a claim even in the
3 layman's sense of the word. (Def. Post-Trial Brf. at 6).
- 4 • [A]djudicating the 1996 Claims would be error, because there is no case or
5 controversy at this time, and the Court's Article III jurisdiction does not
6 permit its intervention into matters where no case or controversy exists.
7 (*Id.* at 7).
- 8 • [T]he 1996 Claims is not the subject of a case or controversy. Therefore,
9 this Court would be exceeding its jurisdiction under Article III of the
10 Constitution if it decided this issue. (*Id.* at 13).
- 11 • Milanian submits there is no claim ripe . . . for declaratory judgment. The
12 declaratory judgment statute, 28 U.S.C. § 2201, requires the existence of a
13 case or controversy. (*Id.*).

14 For Milanian to argue now that "had the Court taken the State Action into account, it
15 would have [not issued an injunction]" simply underscores the outrageousness of Milanian's
16 conduct. Milanian's assertions in his post-trial submissions cannot be squared with the claims he
17 had asserted just two weeks prior in the New Jersey Action. Milanian is playing fast and loose
18 with both this Court and the New Jersey courts. This conduct is sanctionable. Moreover, the
19 doctrine of judicial estoppel bars Milanian from taking these totally inconsistent positions. *See*
20 *Hamilton v. State Farm Fire and Cas. Co.*, 270 F.3d 778, 782 (9th Cir. 2001) (judicial estoppel
21 seeks to prevent parties from asserting inconsistent positions in different forums to gain
22 advantage).¹

23 **II. MILANIAN'S SUBSTANTIVE ARGUMENTS ARE MERITLESS.**

24 Milanian bases his motion for reconsideration on two arguments: (1) this Court exceeded
25 its authority by enjoining Milanian from pursuing his 1996 Claims in state court; and (2) this
26 Court has violated Milanian's constitutional right to a trial by jury on Plaintiffs' declaratory
27 judgment count. Both arguments are groundless.

28 **A. This Court Has The Authority To Enjoin Milanian From Filing Compulsory Counterclaims In Any Federal And State Court.**

The Court's injunction barring Milanian from filing related claims in a federal or state
action is entirely appropriate and fully consistent with the decision in *Seattle Totems Hockey*

¹ Absent some affirmative explanation from counsel that they were unaware of the New Jersey Action at the time they filed Milanian's post-trial submissions, a *Fed. R. Civ. P.* 11 inquiry is appropriate.

1 *Club, Inc. v. National Hockey League*, 652 F.2d 852, 854-55 (9th Cir. 1981), *cert. denied*,
2 457 U.S. 1105 (1982) (cited by the Court in the February 19th Judgment). The Court's injunction
3 is based "on the long recognized power of courts of equity to effectuate their decrees by
4 injunctions or writs of assistance and thereby avoid re-litigation of questions once settled
5 between the same parties." *Wesch v. Folsom*, 6 F.3d 1465, 1470 (11th Cir. 1993) (citing *Root v.*
6 *Woolworth*, 150 U.S. 401, 411-12 (1893); *Hamilton v. Nakai*, 453 F.2d 152 (9th Cir. 1971), *cert.*
7 *denied* 406 U.S. 945 (1972)).

8 This equitable power has been codified by Congress in the All-Writs Act, 28 U.S.C.
9 § 1651, which gives federal courts the power to issue injunctions in aid of their jurisdiction.
10 Courts routinely have held that the All-Writs Act also empowers federal courts to issue
11 injunctions to protect or effectuate their judgments. *E.g.*, *Wesch*, 6 F.3d at 1470; *Kinnear-Weed*
12 *Corp. v. Humble Oil & Ref. Co.*, 441 F.2d 631, 637 (5th Cir), *cert. denied*, 404 U.S. 941 (1971);
13 *Ward v. Pennsylvania New York Cent. Transp. Co.*, 456 F.2d 1046, 1048 (2d Cir. 1972); *see also*
14 *McIntyre v. McIntyre*, 771 F.2d 1316, 1318-19 (9th Cir. 1985) (noting district court's "virtually
15 unflagging obligation . . . to exercise the jurisdiction given them" even if it requires the district
16 court to involve itself in state proceedings) (quoting *Colorado River Water Conservation District*
17 *v. United States*, 424 U.S. 800, 813 (1976)). For these reasons, an injunction barring Milanian
18 from prosecuting his New Jersey Action in no way offends the concept of state sovereignty.

19 The Anti-Injunction Act, 28 U.S.C. § 2283, does not proscribe the injunction issued by
20 this Court. As a check on the very broad powers inherent in the All-Writs Act, Congress passed
21 the Anti-Injunction Act, 28 U.S.C. § 2283, which prohibits federal courts from enjoining state
22 court proceedings except under three exceptions. Two of those exceptions apply here.
23 Specifically, the Anti-Injunction Act authorizes a federal court to enjoin a state court proceeding:
24 (1) when necessary in aid of its jurisdiction; and (2) to protect or effectuate its judgments.

25 Where, as here, "a court issues an injunction, it customarily retains jurisdiction to enforce
26 it." *Wesch*, 6 F.3d at 1470 (citing *Suntex Dairy v. Bergland*, 591 F.2d 1663, 1068 (5th Cir. 1979);
27 *Plaquemines Parish Comm. Council v. United States*, 416 F.2d 952, 954 (5th Cir. 1969)
28 ("generally, a district court retains jurisdiction to enforce its prior orders"); *United States v.*

1 *Fisher*, 864 F.2d 434, 436 (7th Cir. 1988); *McCall-Bey v. Frenzen*, 777 F.2d 1178, 1183 (7th Cir.
2 1985); cf. 11 Wright & Miller, *Federal Practice & Procedure*, § 2961 at p. 599 (1973)). This
3 Court unquestionably retains jurisdiction over the parties to enforce its February 19th Judgment,
4 and thus has the power to enjoin Milanian from prosecuting the New Jersey Action.

5 The “to protect or effectuate judgment” exception in the Anti-Injunction Act is
6 commonly referred to as the “relitigation exception.” The relitigation exception is grounded in
7 principles of *res judicata* and collateral estoppel. *Chick Kam Choo v. Exxon Corp.*, 486 U.S.
8 140, 147 (1988). The “essential prerequisite for applying the relitigation exception is that the
9 claims or issues which the federal injunction insulates from litigation in state proceedings
10 actually have been decided by the federal court.” *Id.* at 148; see also *Fund for Animals, Inc. v.*
11 *Lujan*, 962 F.2d 1391, 1398 (9th Cir. 1992) (under the relitigation exception, a district court has
12 the authority to stay a state court action if the state action involved the “same parties or their
13 privies,” and “the same cause of action” as the judgment on the merits in the prior federal
14 action).²

15 The relitigation exception applies here because the parties and the causes of action are the
16 same. This Court has ruled that any of Milanian’s claims stemming from the 1996 events were
17 compulsory counterclaims and thus waived because Milanian did not assert them in this action.
18 The claims in Milanian’s New Jersey complaint all stem from the 1996 events, as evidenced by
19 the following allegations in the New Jersey Action:

20 5. On or about May 12, 1996, Milanian submitted an eight-page
21 outline of a confidential business plan entitled the “Marlania Project” to CW
[Caesar’s World] in Las Vegas, Nevada.

22
23 ² The cases cited by Milanian in purported support of his argument do not apply because they concern the
24 injunction of a state court before the federal court had actually issued its final judgment. For example, in
25 *Nolen v. Hammel Company, Inc.*, 56 F.R.D. 361 (D.S.C. 1972), the plaintiffs in an automobile personal
26 injury action filed suit in federal district court, and the defendant then filed suit in state court. The federal
27 court denied plaintiffs’ petition to enjoin the state court action, finding that it was prohibited under the
28 Anti-Injunction Act. Thus, the Ninth Circuit’s footnote in *Seattle Totems*, which was cited in support by
Milanian, was intended to apply only before judgment had been entered. *Seattle Totems*, 652 F.2d at 855
n.5. For instance, in *Brown v. McCormick*, 608 F.2d 410, 416 (10th Cir. 1979), the Tenth Circuit affirmed
a district court’s injunction barring the defendant from prosecuting a state court action based, in part, on
the fact that it was a compulsory counterclaim that should have been raised in the federal litigation where
judgment had already issued.

1 6. The Marlania Project included a sub-project for the construction of
2 a replica of the ancient Coliseum of Rome and the integration thereof into the
Caesar's Palace property of CW in Las Vegas, Nevada.

3 7. The replica Coliseum was to include an entertainment complex
4 including restaurants, theatres, shops and special events.

5 9. By letter dated August 12, 1996, CW declined to further consider
the Marlania Project and acknowledged the confidentiality of Plaintiff's
6 submission.

7 10. By a certificate dated August 14, 1996, David Mitchell, a vice-
president of CW confirmed receipt of the Marlania Project submission, advised
8 plaintiff that CW had no interest therein "at that time" and further confirmed that
submission was confidential.

9

10 12. In April 2001, CW and PP [Park Place Entertainment] announced
the construction of a replica of the Coliseum of Rome as an extension of their
11 property in Las Vegas, and the use thereof as an entertainment and convention
venue, which is presently scheduled to open in March 2003.

12 13. The construction of the replica detailed in the preceding paragraph
13 was identical to the idea previously presented by Plaintiff.

14 14. Despite the fact that Plaintiff had presented the idea of constructing
a replica of the Coliseum of Rome as an extension of the CW and PP property in
15 Las Vegas, Defendants failed to provide Plaintiff with any credit, recognition,
compensation or remuneration in any form.

16 * * *

17 In the February 19th Judgment, this Court specifically ruled that any legal claim based on
18 allegations from 1996 were compulsory counterclaims. February 19th Judgment at 24-26, ¶¶ 74-
19 81; 50-53, ¶¶ 82-94. The Court held the following: "[A]ny claim arising out of or related to the
20 events of 1996 were compulsory counterclaims. The subject matter of the action was the ability
21 of Plaintiffs to open the Coliseum without threats of legal action from Milanian." *Id.* at 51, ¶ 87
22 (emphasis added). Because all counts in Milanian's New Jersey complaint "arise out of or relate
23 to" its factual allegations relating to the events in 1996, that entire complaint underlying the New
24 Jersey Action falls within the Court's ruling on compulsory counterclaims.

25 To protect and effectuate its judgment on the compulsory counterclaims, this Court has
26 the authority to enjoin Milanian from prosecuting the New Jersey Action.³ That is so because
27

28 ³ The Court's authority to enjoin Milanian is further supported by the New Jersey Court's long-standing
practice of giving preclusive effect to prior federal court judgments. In other words, even if Milanian

1 once a federal court issues a judgment, an exception of the Anti-Injunction Act clearly is
2 triggered. Milanian's argument is tantamount to an assertion that this Court's judgment may be
3 subverted by a subsequent state court decision. Such a contention is contrary to the All-Writs
4 Act, Anti-Injunction Act, and the principles of comity and judicial economy. *See Restatement*
5 *(Second) of Judgments* §19 (1982). This Court has the power, discretion and, indeed,
6 responsibility, to enjoin Milanian from further prosecution of the New Jersey Action and to
7 require him to dismiss that lawsuit with prejudice immediately. Indeed, now that the New Jersey
8 Action is pending in the United States District Court for the District of New Jersey, there is no
9 question as to this Court's power. But even if the New Jersey Action had not been removed,
10 such an order would be appropriate.⁴

11 B. Milanian Waived Whatever Right He Had To Demand A Jury Trial
12 On Plaintiffs' Declaratory Judgment Count.

13 Milanian had ample opportunity to demand a trial by jury on Plaintiffs' amended
14 declaratory judgment count, but failed to do so. Milanian has therefore waived any right he had
15 to demand a jury. *See Barber v. Page*, 390 U.S. 719, 724 (1968) (holding that whereas waiver of
16 most constitutionally guaranteed rights requires "intentional relinquishment or abandonment,"
17 the Seventh Amendment right to a jury trial may be waived by a mere failure to act). Milanian
18 was on notice that Plaintiffs sought to add an additional declaratory judgment count when they
19 submitted their Proposed Findings of Fact and Conclusions of Law before the start of trial on
20 January 21, 2003. In that submission, Plaintiffs made clear that they would seek leave to file an
21 amended complaint for a declaratory judgment on the alleged 1996 events. Plaintiffs'
22 January 21 Findings at 30, ¶40. Moreover, Milanian's proposed witness list included four
23 individuals whose only conceivable testimony could have been on the 1996 events. But even

24 convinces this Court to rescind its injunction order and the New Jersey federal district court remands, the
25 state court will be obligated to dismiss Milanian's claims. *See Watkins v. Resorts International Hotel and*
26 *Casino, Inc.*, 591 A.2d 592, 124 N.J. 398, 406 (1991) ("The rule that state courts must accord preclusive
27 effect to prior federal court judgments is so settled that it is accepted as axiomatic") (citations omitted).

28 ⁴ If necessary, this Court has the power to enforce its February 19th Judgment by enjoining the New Jersey
state court itself. Based on principles of comity, however, "the injunction should issue against the
litigant, and not the state court, whenever possible." *Silcox v. United Trucking Service, Inc.*, 687 F.2d 848,
853 (6th Cir. 1982).

1 though Milanian knew before trial of Plaintiffs' intention to amend, Milanian did not claim a
2 right to a jury trial on the new claim, or say anything about a jury trial.

3 As a result, Plaintiffs went forward with their case, and submitted evidence and testimony
4 to support what would become count six (Declaratory Judgment on the 1996 Claims) in the
5 Amended Complaint. During Plaintiffs' case-in-chief, Milanian did not object to the testimony
6 or suggest anything about a jury trial. On January 23, 2003, at the close of Plaintiffs' case,
7 Plaintiffs formally moved for leave to amend their Complaint to add the declaratory judgment.
8 This Court granted Plaintiffs' motion, but requested the parties to brief whether it could award
9 judgment on that count in their post-trial briefs. Milanian did not make a jury demand on
10 January 23, 2002, when Plaintiffs formally moved for leave to amend. On February 14, 2003,
11 Milanian filed his post-trial submissions. Once again, he did not claim any deprivation of his
12 Seventh Amendment right.

13 **III. MILANIAN SHOULD BE HELD IN CIVIL CONTEMPT OF COURT.**

14 Milanian's intentional violation of this Court's February 19th Judgment places him in
15 civil contempt of court, both retroactively and prospectively. Milanian's contempt began as soon
16 as he received notice of the February 19th Judgment and still continued to prosecute his New
17 Jersey action. That conduct directly violated the Court's order. As a result, Milanian should be
18 assessed a fine of no less than \$1,000 per day from February 19, 2003 until entry of a Contempt
19 Order (on Plaintiffs' cross motion) or when Milanian dismisses his New Jersey Action with
20 prejudice, whichever occurs first. This \$1,000 per day assessment is remedial in nature, because
21 it is intended to both to coerce Milanian in dismissing his New Jersey Action and to compensate
22 Plaintiffs for costs and fees incurred since February 19, 2003 in responding to Milanian's New
23 Jersey Action. *See John T. v. The Delaware County Intermediate Unit*, 318 F.d 545, 554 (3d Cir.
24 2003) ("If civil contempt sanctions are not designed to punish, they may be retroactive.").

25 Moreover, Plaintiffs request that this Court prospectively hold Milanian in civil contempt
26 if he fails to dismiss the New Jersey action within three business days of entry of this Court's
27 Contempt Order. The Court should assess an enhanced penalty of \$5,000 for each day Milanian
28 is in violation. A defendant may be held in civil contempt to enforce an injunction. *Portland*

1 *Feminist Women's Health Center v. Advocates For Life, Inc.*, 877 F.2d 787, 789-90 (9th Cir.
2 1989). In the context of a civil contempt charge, a defendant's disobedience with a court's order
3 need not be willful, and contempt cannot be avoided based solely upon the defendant's good
4 faith. *Harley-Davidson, Inc. v. Morris*, 19 F.3d 142, 148-49 (3d Cir. 1994). The prospective
5 contempt charge sought here is civil in nature because "its purpose is remedial, *i.e.*, to
6 compensate for the costs of the contemptuous conduct or to coerce future compliance with the
7 court's order." *Portland Feminist*, 877 F.2d at 790.

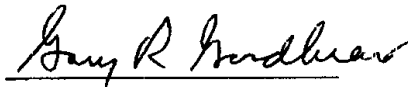
8 If Milanian fails to comply with the Court's Order to dismiss his New Jersey Action, the
9 imposition of compensatory sanctions against Milanian is appropriate. Plaintiffs will expend
10 considerable expenses and attorneys' fees in defending Milanian's New Jersey Action. As a
11 form of compensatory relief, Milanian should be required to compensate Plaintiffs for their costs
12 and fees in defending the New Jersey Action, as well as all expenses incurred in handling any
13 public relations, marketing or promotional issues that arise as a result of Milanian's lawsuit.

14 **CONCLUSION**

15 Based on the foregoing, this Court should deny Milanian's Motion for Reconsideration
16 and Alteration of Judgment. In addition, this Court should hold Milanian in contempt of court
17 and assess the sanctions requested above.

18 Respectfully submitted,

19 By:



20 Gary R. Goodheart, Esq.
21 JONES VARGAS
22 3773 Howard Hughes Pkwy, 3rd Fl., South
Las Vegas, Nevada 89109

23 Stephen W. Feingold
24 Richard H. Brown
25 Pitney, Hardin, Kipp & Szuch LLP
26 685 Third Avenue
27 New York, NY 100170-4024
28 Attorneys for Plaintiffs Park Place
Entertainment Corporation and Caesars
World, Inc.

Stephen W. Feingold (SF 2763)
Richard H. Brown (RB 5858)
PITNEY, HARDIN, KIPP & SZUCH LLP
685 Third Avenue
New York, New York 10017-4024
Telephone: (212) 297-5800

Gary R. Goodheart, Esq. Nevada Bar #1203
JONES VARGAS
3773 Howard Hughes Parkway, Third Floor South
Las Vegas, Nevada 89109
Telephone: (702) 862-3300
Facsimile: (702) 737-7705
Attorneys for Plaintiffs Caesars World, Inc.
and Park Place Entertainment Corporation

**UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF NEVADA**

CAESARS WORLD, INC. and PARK PLACE ENTERTAINMENT CORPORATION,	:	
	:	Hon. Roger L. Hunt, U.S.D.J.
Plaintiffs,	:	CV-S-02-1287-RLH(RJJ)
v.	:	
CYRUS MILANIAN and THE NEW LAS VEGAS DEVELOPMENT COMPANY, LLC,	:	AFFIDAVIT OF STEPHEN W. FEINGOLD
	:	
Defendants.	:	

STATE OF NEW YORK)
) SS:
 COUNTY OF NEW YORK)

STEPHEN W. FEINGOLD, being duly sworn, upon his oath, deposes and says:

1. I am an attorney at law in good standing in both the States of New York and New Jersey. I am a member of the firm of Pitney, Hardin, Kipp & Szuch LLP, attorneys for the Plaintiffs Caesars World, Inc. ("CWT") and Park Place Entertainment Corp. ("PPE") in this matter. As such, I am familiar with the facts set forth below.

2. I make this Affidavit in support of Plaintiffs' Opposition to Defendant Cyrus Milanian's Motion for Reconsideration and Alteration of Judgment and Plaintiffs' Cross-Motion for Contempt.

3. On Friday, February 28, 2002, I learned that on February 27, 2003, CWI and PPE were served with summons and complaint with respect to the lawsuit Mr. Milanian filed against CWI and PPE in Superior Court of New Jersey, Atlantic County, on January 27, 2003.

4. On Tuesday, March 4, 2003, I contacted by telephone, Kenneth Goodkind, Esq., Mr. Milanian's New Jersey counsel who filed the Complaint in the New Jersey action. During that call, Mr. Goodkind advised me that he had just received a copy of this Court's February 19, 2003 Findings of Fact, Conclusions of Law and Judgment. I told Mr. Goodkind that while I understood that he would need to review this decision, absent immediate resolution of Mr. Milanian's New Jersey action, CWI and PPE would seek contempt charges. Mr. Goodkind has not contacted me since that phone call. Instead, on March 6, 2003 Milanian filed the instant motion for reconsideration in this Court.

5. On March 19, 2003, CWI and PPE filed a Notice of Removal with the District Court of New Jersey related to Mr. Milanian's New Jersey State action.

6. I attach hereto as Exhibit A a true copy of the letter dated March 18, 2003 from my partner and co-counsel in this case, Richard Brown, to Melvin Silverman and Andras Babero, Mr. Milanian's counsel in this case, with a copy to Mr. Goodkind. As of close of business on March 21, 2003, no one on Mr. Milanian's behalf had responded to that letter.


STEPHEN W. FEINGOLD

Sworn and subscribed to
before me this 24 day of March 2003


Notary Public

ANNA LISIANSKY
Notary Public, State of New York
No. 0116026665
Qualified in Bronx County
Commission Expires December 13, 2005

MAR-24-2003 MON 03:12 PM

FAX NO.

P. 05

FROM PITNEY HARDIN KIPP & SZUCH

(MON) 3.24'03 15:03/ST. 15:02/NO. 4860127274 P 2

PITNEY, HARDIN, KIPP & SZUCH LLP

RICHARD H. BROWN
DIRECT DIAL NUMBER
973-682-5116
E-MAIL
RBROWN@PITNEYHARDIN.COM

MAIL TO
P.O. BOX 1945
MORRISTOWN, NEW JERSEY 07962-1945

(DELIVERY TO)
200 CAMPUS DRIVE
FLORENCE PARK, NEW JERSEY 07932-0860
(973) 682-5300
FACSIMILE (973) 682-1660

NEW YORK, NEW YORK
(212) 267-5800
FACSIMILE (212) 682-5465
RED BANK, NEW JERSEY
(732) 234-1000
FACSIMILE (732) 224-1550
BRUSSELS, BELGIUM
32-02-514-84-10
FACSIMILE 32-02-514-10-03

18, 2003

Via UPS Delivery

Melvin K. Silverman, Esq.
One Gateway Center, Suite 2600
Newark, New Jersey 07102

Andras F. Babero, Esq.
9500 Hillwood Drive, Suite 130
Las Vegas, NV 89134

Re: Milanian v. Caesars World and Park Place Entertainment
NJ Superior Court Docket No. ATL-L-230-03

Dear Mel and Andras:

I send this letter along with a copy of the Notice of Removal (and related papers) being filed in the above matter.

We obviously disagree with the reading of *Seattle Totems Hockey Club, Inc. v. National Hockey League*, 652 F.2d 852 (9th Cir. 1981) and the Anti-Injunction Act, 28 U.S.C. §2283 set forth in your client's motion for reconsideration in the District of Nevada case. There is a judgment in that matter, and thus Judge Hunt's injunction applies, irrespective of whether your client's subsequent suit is filed in federal or state court. (See ¶120 of Judge Hunt's Findings of Fact, Conclusions of Law and Judgment). However, with the removal of your client's New Jersey state court action to federal court, there is clearly no colorable basis to claim that the relief ordered by Judge Hunt is somehow unclear. Accordingly, we request that Mr. Milanian immediately dismiss with prejudice the New Jersey action. Our clients reserve all rights, including the right to seek contempt sanctions, if he fails to do so.

Very truly yours,
COPY
RICHARD H. BROWN

RHB/s
cc: Kenneth S. Goodkind, Esq.

1014069A01032403

EXHIBIT A

14

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

CYRUS MILANIAN,

Plaintiff,

HONORABLE FREDA L. WOLFSON

Civil Action No. 03-CV-1259

v.

CAESARS WORLD, INC. and PARK
PLACE ENTERTAINMENT CORP.,

Defendants.

:
ORDER STAYING LITIGATION
:
:
:

The Court having conducted a telephone conference with counsel on May 2, 2003, during which Pitney, Hardin, Kipp & Szuch LLP, (Richard H. Brown and Brian G. Friel) appeared on behalf of defendants, and Melvin K. Silverman & Assoc., P.C. (Phillip Duvalsaint) and Flaster Greenberg, P.C. (Kenneth S. Goodkind) appeared on behalf of plaintiff; and the Court having considered the submissions of the parties; and good cause having been shown;

IT IS on this 14th day of May, 2003, ORDERED that:

1. All proceedings in this matter are hereby stayed through and including July 2, 2003, or until ten business (10) days after the Court in the matter styled *Caesars World, Inc., et al. v. Cyrus Milanian, et al.*, Case No. CV-S-02-1287 (D. Nev.) (the "Nevada Action"), issues its ruling on both of the following motions pending before that Court: (a) Defendant's Motion for

EXHIBIT "G"

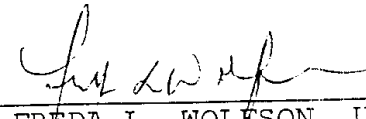
Reconsideration and Alteration of Judgment; and (b) Plaintiffs' Cross-Motion for Contempt, whichever date occurs first.

2. Pending the stay in this matter, defendants are not required to file their Answer or otherwise respond to plaintiff's Complaint.

3. Plaintiff's April 8, 2003 Motion for Remand is deemed to have been withdrawn without prejudice to Plaintiff's right to renew that motion after the stay is no longer in effect.

4. If the Court in the Nevada Action has not issued its rulings by June 27, 2003, the parties shall advise this Court of the status of the proceedings in the Nevada Action and may petition the Court to extend this stay or have the stay expire on July 2, 2003.


By:


FRED A L. WOLFSON, U.S.D.J.

ENTERED
ON
14. MAY 2003

MAY 14 2003

WILLIAM T. WALSH, CLERK

By: 
(Deputy Clerk)

FROM PITNEY HARDIN KIPP & SZUCH

MAY-30-2003 FRI 12:37 PM PITNEY HARDIN KIPP & SZUCH

(FRI) 5.30'03 17:16/ST. 17:11/NO. 4860155314 P. 4

FAX NO. 212 6328

P. 03

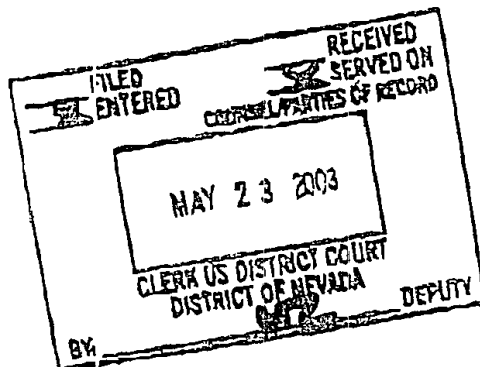
05/29/2003 12:04 FAX 7027:77708

JONES VARGAS

0003

MAY-23-2003 09:43

P. 02/03



FILED RECEIVED
ENTERED SERVED ON
COUNSEL PARTIES OF RECORD

2003 MAY 22 P 1:1

DISTRICT OF NEVADA

BY [Signature] DEPUTY

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

CAESARS WORLD, INC. and PARK PLACE
ENTERTAINMENT CORPORATION,

Case No.: CV-S-02-1287-RLH (RJJ)

ORDER

Plaintiffs,

vs.

CYRUS MILANIAN and THE NEW LAS
VEGAS DEVELOPMENT COMPANY,
L.L.C.,

Defendants.

The Court, having considered Plaintiffs' Motion for Contempt (#78) and hearing argument in a duly noticed hearing on May 21, 2003, at which Defendants did not appear, hereby finds Defendants guilty of civil contempt.

Accordingly, and for good cause appearing,

IT IS HEREBY ORDERED that Defendants DISMISS WITH PREJUDICE or WITHDRAW their action against Plaintiffs in New Jersey on or before June 2, 2003.

IT IS FURTHER ORDERED that, failing to dismiss with prejudice or withdraw their action in New Jersey, Defendants shall pay to Plaintiffs a penalty of \$1000 per day for every day after June 2, 2003 that they fail to comply with the Court's order.

FROM P. TNEY HARDIN KIPP & SZUCH

(FRI) 5.30'03 17:16/ST. 17:11/NO. 4360155314 P 5

HARDIN KIPP & SZUCH

FAX NO. 212 6328

P. 04

03/23/2003 12:05 FAX 7027377705

JONES VARGAS

0004

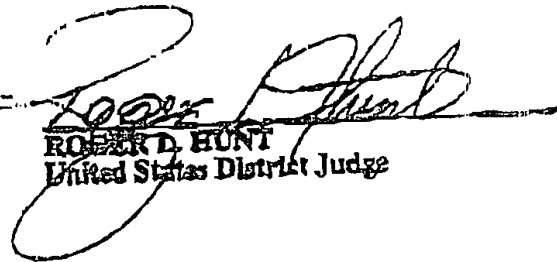
P. 03/23

MAY-23-2003 09:44

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26

IT IS FURTHER ORDERED that the clerk shall send to both parties, by mail and
by facsimile, this order today, May 22, 2003.

Dated: May 22, 2003.


ROBERT D. HUNT
United States District Judge

MELVIN K. SILVERMAN (MS5178)
MELVIN K. SILVERMAN & ASSOC.
mks@powerlaw.net
One Gateway Center,
Suite 2600
Newark, NJ 07102
Phone: (973) 645-9494
Attorneys for Plaintiff Cyrus Milanian

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

CYRUS MILANIAN

Plaintiff

v.

CAESARS WORLD, INC., and PARK
PLACE ENTERTAINMENT CORP.

Defendants.

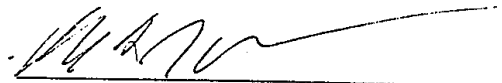
Honorable Freda L. Wolfson

Civil Action No. 03-1259

NOTICE OF VOLUNTARY DISMISSAL
WITHOUT PREJUDICE

COMES NOW, Plaintiff CYRUS MILANIAN (hereinafter "Plaintiff"), by and through their undersigned attorney hereby files this Notice of Voluntary Dismissal without Prejudice in connection with the above styled action against all Defendants.

Respectfully Submitted,

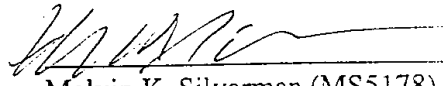


Melvin K. Silverman (MS5178)
mks@powerlaw.net
MELVIN K. SILVERMAN & ASSOC.
One Gateway Center,
Suite 2600
Newark, NJ 07102
Phone: (973) 645-9494

EXHIBIT " I "

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been delivered by facsimile and U.S. Mail on this 5 day of June, 2003, to: RICHARD H. BROWN, of PITNEY, HARDIN, KIPP & SZUCH LLP, attorneys for petitioners Caesars World, Inc., and Park Place Entertainment Corporation, at (973) 966-1550, and P.O. Box 1945, Morristown, New Jersey 07962-1945 respectfully.


Melvin K. Silverman (MS5178)

MELVIN K. SILVERMAN (MS5178)
MELVIN K. SILVERMAN & ASSOC.
mks@powerlaw.net
One Gateway Center,
Suite 2600
Newark, NJ 07102
Phone: (973) 645-9494
Attorneys for Plaintiff Cyrus Milanian

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

CYRUS MILANIAN

Plaintiff

v.

CAESARS WORLD, INC., and PARK
PLACE ENTERTAINMENT CORP.

Defendants.

Honorable Freda L. Wolfson

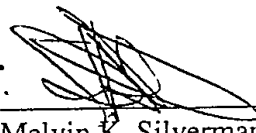
Civil Action No. 03-1259

WITHDRAWAL

COMES NOW, Plaintiff CYRUS MILANIAN (hereinafter "Plaintiff"), by and through their undersigned attorney hereby Withdraws Its Complaint in connection with the above styled action against all Defendants.

Respectfully Submitted,

Kenneth S. Goodkind, Esq.
FLASTER GREENBERG P.C.
1810 Chapel Avenue West
Suite 300
Cherry Hill, NJ 08002-4606
Cherry Hill, NJ
(855) 661-2273
ken.goodkind@flastergreenberg.com

(f) 

Melvin K. Silverman, Esquire
(For the firm)
MELVIN K. SILVERMAN & ASSOC.
One Gateway Center,
Suite 2600
Newark, NJ 07102
Phone: (973) 645-9494
mks@powerlaw.net

EXHIBIT "J"

MELVIN K. SILVERMAN (MS5178)
MELVIN K. SILVERMAN & ASSOC.
mks@powerlaw.net

One Gateway Center,
Suite 2600

Newark, NJ 07102

Phone: (973) 645-9494

Attorneys for Plaintiff Cyrus Milanian

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

CYRUS MILANIAN

Plaintiff

v.

CAESARS WORLD, INC., and PARK
PLACE ENTERTAINMENT CORP.

Defendants.

Honorable Freda L. Wolfson

Civil Action No. 03-1259

**PLAINTIFF'S MOTION TO WITHDRAW
NOTICE OF VOLUNTARY DISMISSAL
WITHOUT PREJUDICE**

COMES NOW, Plaintiff CYRUS MILANIAN (hereinafter "Plaintiff"), by and through his undersigned counsel, pursuant to Rules 55 and 81(c) of the Federal Rules of Civil Procedure, and moves this Honorable Court to Withdraw PLAINTIFF'S NOTICE OF VOLUNTARY DISMISSAL WITHOUT PREJUDICE, and as grounds therefor states:

Plaintiff is filing contemporaneously with this motion, a Withdrawal of its's Complaint. Although undersigned counsel believes that a Withdrawal is the equivalent of a Dismissal Without Prejudice, opposing counsel insists that Plaintiff file a Dismissal with Prejudice. According to Judge Hunt's order Plaintiff is to file either a Withdrawal, or a Dismissal with Prejudice. Therefore, Plaintiff requests that the Notice of Dismissal Without Prejudice be withdrawn, and files a Withdrawal of its Complaint in its place.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court withdraw

EXHIBIT "K"

Plaintiff's NOTICE OF VOLUNTARY DISMISSAL WITHOUT PREJUDICE.

(for) Kenneth S. Goodkind, Esq.
FLASTER GREENBERG P.C.
1810 Chapel Avenue West
Suite 300
Cherry Hill, NJ 08002-4606
Cherry Hill, NJ
(856) 661-2273
ken.goodkind@flastergreenberg.com

(for) Melvin K. Silverman, Esquire
(For the firm)
MELVIN K. SILVERMAN & ASSOC.
One Gateway Center,
Suite 2600
Newark, NJ 07102
Phone: (973) 645-9494
mks@powerlaw.net

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been delivered by facsimile and U.S. Mail to: RICHARD H. BROWN, of PITNEY, HARDIN, KIPP & SZUCH LLP, attorneys for petitioners Caesars World, Inc., and Park Place Entertainment Corporation, at (973) 966-1550, and P.O. Box 1945, Morristown, New Jersey 07962-1945 respectfully.

(for) Melvin K. Silverman (MS5178)

MELVIN K. SILVERMAN (MS5178)
MELVIN K. SILVERMAN & ASSOC.
mks@powerlaw.net
One Gateway Center,
Suite 2600
Newark, NJ 07102
Phone: (973) 645-9494
Attorneys for Plaintiff Cyrus Milanian

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

CYRUS MILANIAN

Plaintiff

v.

CAESARS WORLD, INC., and PARK
PLACE ENTERTAINMENT CORP.

Defendants.

Honorable Freda L. Wolfson

Civil Action No. 03-1259

ORDER

On or about June 6, 2003,, Plaintiff filed A Notice of Voluntary Dismissal Without Prejudice pursuant to Judge Hunt's order, the presiding judge in the Nevada case No. CV-S-02-1287-RLH-RJJ. Counsel for Defendants requested that the Plaintiff withdraw the Notice of Voluntary Dismissal without prejudice, because they allege that it does not comply with Judge Hunt's order. Therefore, Plaintiff Withdraws its Notice of Voluntary Dismissal without Prejudice, and files a Withdrawal of its Complaint, contemporaneous with this Order, in substitution of the Notice of Voluntary Dismissal without Prejudice.

Accordingly, pursuant to the conditions set forth by Plaintiff, its MOTION TO WITHDRAW PLAINTIFF'S Notice of Voluntary Dismissal without Prejudice, is GRANTED.

Dated this _____ day of June, 2003.

By: _____
Honorable Freda L. Wolfson

orig: Clerk
cc: Melvin K. Silverman, Esq.

MELVIN K. SILVERMAN (MS5178)
MELVIN K. SILVERMAN & ASSOC.
mks@powerlaw.net
One Gateway Center,
Suite 2600
Newark, NJ 07102
Phone: (973) 645-9494
Attorneys for Plaintiff Cyrus Milanian

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

CYRUS MILANIAN

Plaintiff

v.

CAESARS WORLD, INC., and PARK
PLACE ENTERTAINMENT CORP.

Defendants.


Honorable Freda L. Wolfson

Civil Action No. 03-1259

**NOTICE OF VOLUNTARY DISMISSAL
WITHOUT PREJUDICE**

COMES NOW, Plaintiff CYRUS MILANIAN (hereinafter "Plaintiff"), by and through their undersigned attorney hereby files this Notice of Voluntary Dismissal without Prejudice in connection with the above styled action against all Defendants.

Respectfully Submitted,

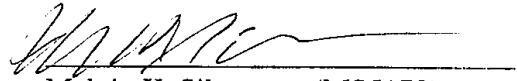


Melvin K. Silverman (MS5178)
mks@powerlaw.net
MELVIN K. SILVERMAN & ASSOC.
One Gateway Center,
Suite 2600
Newark, NJ 07102
Phone: (973) 645-9494

EXHIBIT "C"

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been delivered by facsimile and U.S. Mail on this 5 day of June, 2003, to: RICHARD H. BROWN, of PITNEY, HARDIN, KIPP & SZUCH LLP, attorneys for petitioners Caesars World, Inc., and Park Place Entertainment Corporation, at (973) 966-1550, and P.O. Box 1945, Morristown, New Jersey 07962-1945 respectfully.


Melvin K. Silverman (MS5178)

Brian Friel
06/09/2003 05:34 PM

To: Katherine Dominus/PHKS@PHKS
cc:
Subject: RE: Milanian v. Caesars (NJ Action)

Forwarded by Brian Friel/PHKS on 06/09/2003 05:32 PM



"Philip A. Duvalsaint" <pad@LiteLongLegal.com> on 06/05/2003 06:12:39 PM

Please respond to <PAD@BrowardLawyer.net>

To: "MKS-Powerlaw" <mks@powerlaw.net>, <BFriel@PitneyHardin.com>
cc: <PAD@BrowardLawyer.net>, <afhabero@lvcm.com>
Subject: RE: Milanian v. Caesars (NJ Action)

We have overnighted a Notice Voluntary Dismissal w/o Prejudice in the New Jersey Action.

---Original Message---

From: MKS-Powerlaw [mailto:mks@powerlaw.net]
Sent: Tuesday, June 03, 2003 12:12 AM
To: BFriel@PitneyHardin.com
Cc: PAD@BrowardLawyer.net; afhabero@lvcm.com
Subject: RE: Milanian v. Caesars (NJ Action)

Dear Mr Friel

Andras Barbero, our local counsel, has returned from some official business in Mexico.

It is my understanding that certain motions have been filed today, one of which requests that the Court modify the dismissal order relative to the NJ matter to one having the effect of a stay of that matter until the appeal before the 9th Circuit is complete, the rationale therefore being to obviate a potential limitations or laches issue in the event that J. Hunt is reversed, in whole or part, by the Circuit. The same end can be effected by stipulation if you are so inclined.

Given that I will be out of the country June 6-17, kindly direct all further communications on this issue to Mr. Barbero or Mr Duvalsaint of my office in FL.

Very truly yours

M.K.SILVERMAN

-----Original Message-----

From: BFriel@PitneyHardin.com [mailto:BFriel@PitneyHardin.com]
Sent: Monday, June 02, 2003 5:27 PM
To: mks@powerlaw.net
Cc: ken.goodkind@flastergreenberg.com
Subject: Milanian v. Caesars (NJ Action)

Composite EXHIBIT "D"

Dear Mr. Silverman:

I understand from Mr. Goodkind that you are in receipt of Judge Hunt's Contempt Order. I also understand from Mr. Goodkind that it is your intention to file the ordered dismissal "sometime later this week." As you know, Judge Hunt's Order required that you file the dismissal no later than today. Since I am confident that as an attorney admitted to practice in New Jersey and one who was admitted pro hac vice in Nevada based on your sworn declaration that you would comply with the local rules of that court, which must by necessity include complying with the orders of that court, I request that you clarify that your client's compliance with Judge Hunt's Order is not being delayed because of your lack of diligence. Accordingly, unless the dismissal is filed by close of business today, we will seek imposition of sanctions not only against Mr. Milanian, but also his counsel for failing to take the Court's Order seriously.

Please provide us with a copy of the dismissal at the same time you file it with the District Court in New Jersey, as required by the Federal Rules.

Very truly yours,

Brian G. Friel

Brian G. Friel, Esq.
Pitney, Hardin, Kipp & Szuch LLP
200 Campus Drive
Morristown, New Jersey 07962
Tel: 973-966-8122
Fax: 973-966-1550
bfriel@pitneyhardin.com

The information contained in this e-mail message, together with any attachments thereto, is intended only for the personal and confidential use of the addressee(s) named above. The message and the attachments are or may be an attorney-client or other privileged or protected communication. If you are not the intended recipient of this message, or authorized to receive it for the intended recipient, you have received this message in error. You are not to

Brian Friel
06/09/2003 05:34 PM

To: Katherine Dominus/PHKS@PHKS
cc:
Subject: RE: Milanian v. Caesars (NJ Action)

Forwarded by Brian Friel/PHKS on 06/09/2003 05:33 PM

"Philip A. Duvalsaint" <pad@LifeLongLegal.com> on 06/06/2003 12:54:08 PM

Please respond to <PAD@BrowardLawyer.net>

To: <BFriel@PitneyHardin.com>, <PAD@BrowardLawyer.net>
cc: "MKS-Powerlaw" <mks@powerlaw.net>, <PAD@BrowardLawyer.net>, <afbabero@lvcn.com>, <SFeingold@PitneyHardin.com>, <rbrown@PitneyHardin.com>, <ken.goodkind@flastergreenberg.com>
Subject: RE: Milanian v. Caesars (NJ Action)

Actually, the order said "Withdrawal or Dismissal with Prejudice." We will file a motion requesting that that the dismissal be withdrawn, and Withdrawal substituted in its place.

-----Original Message-----

From: BFriel@PitneyHardin.com [mailto:BFriel@PitneyHardin.com]
Sent: Thursday, June 05, 2003 6:47 PM
To: PAD@BrowardLawyer.net
Cc: 'MKS-Powerlaw'; BFriel@PitneyHardin.com; PAD@BrowardLawyer.net; afbabero@lvcn.com; SFeingold@PitneyHardin.com; rbrown@PitneyHardin.com; ken.goodkind@flastergreenberg.com
Subject: RE: Milanian v. Caesars (NJ Action)

I'm not quite sure I understand the basis upon which you categorize the dismissal "Voluntary" as it was ordered by Judge Hunt. Also, your email indicates that the dismissal is without prejudice. If this is correct, your client (and possibly you and Mr. Milanian's other counsel) will be in further violation of Judge Hunt's order as he explicitly required that the New Jersey action be dismissed with prejudice.

The method of service of your dismissal is not clear by your email. If you have not overnighted the dismissal to us, please fax us a copy either this evening or tomorrow morning. My fax number is 973-966 1350.

Regards,

Brian G. Friel

Brian G. Friel, Esq.
Pitney, Hardin, Kipp & Szuch LLP
200 Campus Drive
Morristown, New Jersey 07962

Tel: 973-966-8122
Fax: 973-966-1550
bfriel@pitneyhardin.com

"Philip A. Duvalsaint" <pad@LifeLongLegal.com> on 06/05/2003 06:12:39 PM
Please respond to <PAD@BrowardLawyer.net>

To: "'MKS-Powerlaw'" <mks@powerlaw.net>, <BFriel@PitneyHardin.com>
cc: <PAD@BrowardLawyer.net>, <afbabero@lvcm.com>
Subject: RE: Milanian v. Caesars (NJ Action)

We have overnighted a Notice Voluntary Dismissal w/o Prejudice in the New Jersey Action.

-----Original Message-----

From: MKS-Powerlaw [mailto:mks@powerlaw.net]
Sent: Tuesday, June 03, 2003 12:12 AM
To: BFriel@PitneyHardin.com
Cc: PAD@BrowardLawyer.net; afbabero@lvcm.com
Subject: RE: Milanian v. Caesars (NJ Action)

Dear Mr Friel

Andras Barbero, our local counsel, has returned from some official business in Mexico.

It is my understanding that certain motions have been filed today, one of which requests that the Court modify the dismissal order relative to the NJ matter to one having the effect of a stay of that matter until the appeal before the 9th Circuit is complete, the rationale therefore being to obviate a potential limitations or laches issue in the event that J. Hunt is reversed, in whole or part, by the Circuit. The same end can be effected by stipulation if you are so inclined.

Given that I will be out of the country June 6-17, kindly direct all further communications on this issue to Mr. Barbero or Mr Duvalsaint of my office in FL.

Very truly yours
M.K.SILVERMAN

-----Original Message-----

From: BFriel@PitneyHardin.com [mailto:BFriel@PitneyHardin.com]
Sent: Monday, June 02, 2003 5:27 PM
To: mks@powerlaw.net
Cc: ken.goodkind@flastergreenberg.com
Subject: Milanian v. Caesars (NJ Action)

Dear Mr. Silverman:

I understand from Mr. Goodkind that you are in receipt of Judge Hunt's Contempt Order. I also understand from Mr. Goodkind that it is your

intention to file the ordered dismissal "sometime later this week." As you know, Judge Hunt's Order required that you file the dismissal no later than today. Since I am confident that as an attorney admitted to practice in New Jersey and one who was admitted pro hac vice in Nevada based on your sworn declaration that you would comply with the local rules of that court, which must by necessity include complying with the orders of that court, I request that you clarify that your client's compliance with Judge Hunt's Order is not being delayed because of your lack of diligence. Accordingly, unless the dismissal is filed by close of business today, we will seek imposition of sanctions not only against Mr. Milanian, but also his counsel for failing to take the Court's Order seriously.

Please provide us with a copy of the dismissal at the same time you file it with the District Court in New Jersey, as required by the Federal Rules.

Very truly yours,

Brian G. Friel

Brian G. Friel, Esq.
Pitney, Hardin, Kipp & Szuch LLP
200 Campus Drive
Morristown, New Jersey 07962
Tel: 973-966-8122
Fax: 973-966-1550
bfriel@pitneyhardin.com

The information contained in this e-mail message, together with any attachments thereto, is intended only for the personal and confidential use of the addressee[s] named above. The message and the attachments are or may be an attorney-client or other privileged or protected communication. If you are not the intended recipient of this message, or authorized to receive it for the intended recipient, you have received this message in error. You are not to review, use, disseminate, distribute or copy this message, any attachments thereto, or their contents. If you have received this message in error, please

PITNEY, HARDIN, KIPP & SZUCH LLP

STEPHEN W FEINGOLD

DIRECT DIAL NUMBER
212-267-6845E-MAIL
SFEINGOLD@PITNEYHARDIN.COM685 THIRD AVENUE
NEW YORK, NEW YORK 10017-4024
(212) 297-5800
FACSIMILE (212) 682-3485MORRISTOWN, NEW JERSEY
(973) 966-6300
FACSIMILE (973) 966-1550
RED BANK, NEW JERSEY
(732) 224-1200
FACSIMILE (732) 224-3530
BRUSSELS, BELGIUM
32-02-514-54-19
FACSIMILE 32-02-514-18-59

June 9, 2003

Via FacsimileHonorable Roger L. Hunt, U.S.D.J.
United States District Court for the District of Nevada
333 S. Las Vegas Blvd.
Las Vegas, Nevada 89101Re: Caesars World, Inc. v. Cyrus Milanian et al.
Case No. CV-S-02-1287 RLH-RJJ

Dear Judge Hunt:

As Your Honor knows, this Firm represents plaintiffs Caesars World, Inc. and Park Place Entertainment Corp. in the above-referenced action. I write with respect to Your Honor's Order dated May 22, 2003 (and entered on May 23, 2003), finding defendant Cyrus Milanian in civil contempt (the "Contempt Order"). In the Contempt Order, Your Honor ordered Mr. Milanian to "DISMISS WITH PREJUDICE or WITHDRAW [his] action against Plaintiffs in New Jersey on or before June 2, 2003." I have enclosed herewith a copy of the Contempt Order.

On June 6, 2003 -- four days after Your Honor's deadline -- Mr. Milanian filed with the Clerk of the United States District Court for the District of New Jersey a Notice of Voluntary Dismissal Without Prejudice. In addition to being late, Mr. Milanian and his counsel clearly violated the Contempt Order by filing a dismissal without prejudice. The Contempt Order requires the dismissal to be with prejudice, and Mr. Milanian remains in contempt of that order. I have enclosed herewith a copy of the Dismissal filed by Mr. Milanian and his counsel.

In the late evening of June 5, 2003, immediately upon learning that Mr. Milanian would be filing the next day a dismissal without prejudice, my associate, Brian Friel, notified Mr. Milanian's counsel, Messrs. Melvin Silverman, Andras Babero and Philip Duvalsaint by e-mail that the dismissal that they intended to file the next day would not be in compliance with the Contempt Order. By return e-mail the next day, Mr. Duvalsaint responded that Mr. Milanian's counsel "will file a motion requesting that the dismissal be withdrawn, and Withdrawal substituted in its place." I have enclosed herewith a copy of these two e-mails.

Although we have not yet been served with the substituted Withdrawal referenced in Mr. Duvalsaint's e-mail, we believe that Mr. Milanian and his counsel will attempt to have the New Jersey action dismissed without prejudice, which would be inconsistent with the direction the Court gave at the hearing on May 22, 2003 and the Contempt Order. In order to avert any possible confusion and provide guidance to the District of New Jersey, we respectfully request

PITNEY, HARDIN, KIPP & SZUCH LLP

Honorable Roger L. Hunt, U.S.D.J.

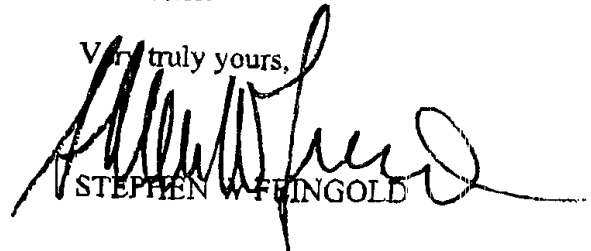
June 9, 2003

Page 2

that Your Honor clarify the Contempt Order to expressly require that Mr. Milanian dismiss his New Jersey action with prejudice. While I normally would not bother the Court with this type of request, Mr. Milanian's continued pattern of evasive conduct leaves me no choice.

We appreciate Your Honor's continued attention to this matter.

Very truly yours,



STEPHEN W. FEINGOLD

cc: Melvin K. Silverman, Esq. (via facsimile)
Philip A. Duvalsaint, Esq. (via facsimile)
Andras Babero, Esq. (via facsimile)

PITNEY, HARDIN, KIPP & SZUCH LLP

BRIAN G. FRIEL
DIRECT DIAL NUMBER
888-4122
E-MAIL
BFRIEL@PITNEYHARDIN.COM

(MAIL TO)
P.O. BOX 1945
MORRISTOWN, NEW JERSEY 07962-1945
(DELIVERY TO)
200 CAMPUS DRIVE
FLORHAM PARK, NEW JERSEY 07932-0950
(973) 966-8300
FACSIMILE (973) 966-1550

NEW YORK, NEW YORK
(212) 297-5800
FACSIMILE (212) 682-3435
RED BANK, NEW JERSEY
(732) 224-1200
FACSIMILE (732) 224-9830
BRUSSELS, BELGIUM
32-02-514-54-19
FACSIMILE 32-02-514-18-59

June 11, 2003

VIA FACSIMILE

Honorable Freda L. Wolfson, U.S.D.J.
United States District Court for the District of New Jersey
Mitchell H. Cohen U.S. Courthouse
1 John F. Gerry Plaza
Camden, New Jersey 08101

Re: Cyrus Milanian v. Caesars World, Inc. and Park Place Entertainment Corp.
Civil Action No. 03-CV-1259 (FLW)

Dear Judge Wolfson:

As Your Honor may recall, this Firm represents defendants in the above-referenced matter. We write with respect to plaintiff Cyrus Milanian's Motion to Withdraw Notice of Voluntary Dismissal Without Prejudice and Notice of Withdrawal, both of which Mr. Milanian recently filed with this Court.

We believe that Mr. Milanian's Motion to Withdraw and Notice of Withdrawal, along with his initial Notice of Voluntary Dismissal Without Prejudice, are inappropriate and in contravention of the May 22, 2003 Contempt Order issued by Judge Hunt in the United States District Court for the District of Nevada (we provided Your Honor with a copy of that Contempt Order on May 30, 2003). By letter dated June 9, 2003, we informed Judge Hunt of Mr. Milanian's initial filing of the voluntary dismissal without prejudice and requested that Judge Hunt clarify his Contempt Order to expressly require that Mr. Milanian dismiss this action before Your Honor with prejudice. A copy of that June 9, 2003 letter is attached hereto. We are forwarding to Judge Hunt today a copy of Mr. Milanian's two most recent filings with this Court.

PITNEY, HARDIN, KIPP & SZUCH LLP

Honorable Freda L. Wolfson, U.S.D.J.

June 11, 2003

Page 2

In an effort to avoid burdening Your Honor with additional filings, we respectfully request that defendants be allowed to wait to further respond to Mr. Milanian's Motion to Withdraw until Judge Hunt responds to our letter of June 9. We will, of course, address this issue immediately if Your Honor requests.

Respectfully yours,


BRIAN G. FRIEL

BGF: kag

Enclosures

(all via facsimile, w/enclosure)

cc: Melvin K. Silverman, Esq.
Kenneth S. Goodkind, Esq.
Andras Bahero, Esq.
Mark Clayton, Esq.
Gary R. Goodheart, Esq.

MELVIN K. SILVERMAN (MS5178)
MELVIN K. SILVERMAN & ASSOC.
mks@powerlaw.net
One Gateway Center,
Suite 2600
Newark, NJ 07102
Phone: (973) 645-9494
Attorneys for Plaintiff Cyrus Milanian

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

CYRUS MILANIAN

Plaintiff

v.

CAESARS WORLD, INC., and PARK
PLACE ENTERTAINMENT CORP.

Defendants.

Honorable Freda L. Wolfson

Civil Action No. 03-1259

**PLAINTIFF'S MOTION TO WITHDRAW
NOTICE OF VOLUNTARY DISMISSAL
WITHOUT PREJUDICE**

COMES NOW, Plaintiff CYRUS MILANIAN (hereinafter "Plaintiff"), by and through his undersigned counsel, pursuant to Rules 55 and 81(c) of the Federal Rules of Civil Procedure, and moves this Honorable Court to Withdraw PLAINTIFF'S NOTICE OF VOLUNTARY DISMISSAL WITHOUT PREJUDICE, and as grounds therefor states:

Plaintiff is filing contemporaneously with this motion, a Withdrawal of its's Complaint. Although undersigned counsel believes that a Withdrawal is the equivalent of a Dismissal Without Prejudice, opposing counsel insists that Plaintiff file a Dismissal with Prejudice. According to Judge Hunt's order Plaintiff is to file either a Withdrawal, or a Dismissal with Prejudice. Therefore, Plaintiff requests that the Notice of Dismissal Without Prejudice be withdrawn, and files a Withdrawal of its Complaint in its place.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court withdraw

EXHIBIT " E "

Plaintiff's NOTICE OF VOLUNTARY DISMISSAL WITHOUT PREJUDICE.

Kenneth S. Goodkind, Esq.
FLASTER GREENBERG P.C.
1810 Chapel Avenue West
Suite 300
Cherry Hill, NJ 08002-4606
Cherry Hill, NJ
(856) 661-2273
ken.goodkind@flastergreenberg.com

(for) _____
Melvin K. Silverman, Esquire
(For the firm)
MELVIN K. SILVERMAN & ASSOC.
One Gateway Center,
Suite 2600
Newark, NJ 07102
Phone: (973) 645-9494
mks@powerlaw.net

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been delivered by facsimile and U.S. Mail to: RICHARD H. BROWN, of PITNEY, HARDIN, KIPP & SZUCH LLP, attorneys for petitioners Caesars World, Inc., and Park Place Entertainment Corporation, at (973) 966-1550, and P.O. Box 1945, Morristown, New Jersey 07962-1945 respectfully.

(for) _____
Melvin K. Silverman (MS5178)

MELVIN K. SILVERMAN (MS5178)
MELVIN K. SILVERMAN & ASSOC.
mks@powerlaw.net
One Gateway Center,
Suite 2600
Newark, NJ 07102
Phone: (973) 645-9494
Attorneys for Plaintiff Cyrus Milanian

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

CYRUS MILANIAN

Plaintiff

v.

CAESARS WORLD, INC., and PARK
PLACE ENTERTAINMENT CORP.

Defendants.

Honorable Freda L. Wolfson

Civil Action No. 03-1259

ORDER

On or about June 6, 2003,, Plaintiff filed A Notice of Voluntary Dismissal Without Prejudice pursuant to Judge Hunt's order, the presiding judge in the Nevada case No. CV-S-02-1287-RLH-RJJ. Counsel for Defendants requested that the Plaintiff withdraw the Notice of Voluntary Dismissal without prejudice, because they allege that it does not comply with Judge Hunt's order. Therefore, Plaintiff Withdraws its Notice of Voluntary Dismissal without Prejudice, and files a Withdrawal of its Complaint, contemporaneous with this Order, in substitution of the Notice of Voluntary Dismissal without Prejudice.

Accordingly, pursuant to the conditions set forth by Plaintiff, its MOTION TO WITHDRAW PLAINTIFF'S Notice of Voluntary Dismissal without Prejudice, is GRANTED.

Dated this ____ day of June, 2003.

By: _____

Honorable Freda L. Wolfson

orig: Clerk
cc: Melvin K. Silverman, Esq.